

Indiana Waterway Permits Manual



**Indiana Department of Transportation
Office of Environmental Services**

**Federal Highway Administration
Indiana Division**



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1.1 Introduction to Waterway Permits

The Indiana Department of Transportation (INDOT) Office of Environmental Services (OES), Waterway Permits Unit (WPU) has developed this waterway permit manual in order to provide a background, overview, and an overall understanding of waterway permits. This manual is focused towards INDOT projects and is presented from that perspective. While this manual may be a useful tool for private sector projects that require waterway permits, the intent of this manual is to cover transportation related projects that require waterway permits. A glossary of permit related terms is located in Appendix A. A list of acronyms can be found in Appendix B.

The goals of this manual are:

1. To streamline INDOT-OES waterway permitting process;
2. To provide a link between INDOT's Project Development Process and the waterway permitting process;
3. To provide a framework for the coordination of information between agencies, INDOT, consultants, and others on waterway permit issues;
4. To increase understanding of the relevant laws, regulations, policies, and procedures which govern waterway permit issues;
5. To provide guidelines for preparing waterway permit applications in a consistent manner.

1.2 Relevant Environmental Laws, Decisions, and Agreements

A "permit" is simply an authorization to perform a regulated activity in a specific manner. Permits are products of environmental laws and the primary means by which regulatory agencies ensure compliance with environmental regulations.

The following are the primary environmental laws and decisions related to waterway permits in INDOT projects:

National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982).

The National Environmental Policy Act (NEPA) requires all federal agencies and their designees to disclose and consider the environmental implications of proposed actions. Pursuant to NEPA, INDOT document the environmental impact(s) of its transportation projects and provides opportunity for public input and participation throughout project development. NEPA establishes levels of analysis: Categorical Exclusion (CE), Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Environmental Impact Statement (EIS), and a Record of Decision (ROD). The NEPA process is enforced by regulations of the Council on Environmental Quality (CEQ) (49 CFR §§ 1500-1508).

Section 404 (b)(1) guidelines of the Clean Water Act (CWA) state that no discharge will be permitted if there is a practicable alternative to the discharge which would have less adverse

impact on the aquatic ecosystem provided the alternative does not have other significant environmental consequences. In order to comply with Section 404 (b)(1), the NEPA document must demonstrate the following for any proposed discharge to an aquatic ecosystem:

1. The do nothing alternative is not practicable because:
 - (a) It would not correct existing or projected capacity deficiencies;
 - (b) It would not correct existing safety hazards;
 - (c) It would not correct the existing roadway geometric deficiencies;
 - (d) It would not correct existing deteriorated conditions and maintenance problems; or
 - (e) It would result in serious impacts to the motoring public and the general welfare of the economy in the area.
- 2) Improvements that will not result in any wetland impacts are not practicable because such avoidance would result in
 - (a) Substantial adverse community impacts to adjacent homes, businesses or other improved properties;
 - (b) Substantially increased project cost;
 - (c) Unique engineering, traffic, maintenance or safety problems;
 - (d) Substantial adverse social, economic or environmental impacts; or
 - (e) The project not meeting identified needs.

The NEPA document should provide the **selection criteria** used in determining the feasibility of the chosen project alternative. It should provide a **list of alternatives** rejected and reasons, including application of criteria to the proposed site. Within this discussion, alternatives that would result in minor alignment shifts, use minimum design requirements, use retaining walls and/or other structures or **alternative designs** shall be assessed. In addition, the NEPA study must document that **all practicable measures to minimize the wetland impact(s), both within and outside of the highway right of way, have been fully considered and incorporated into the project's design.** See the Environmental Protection Agency (EPA) Section 404(b)(1) Guidelines Section for further discussion. The NEPA document should include the following:

- Sufficient information (i.e., location map, site descriptions) for comparison of selected alternatives with other apparent alternatives.
- Statement that impacts have been minimized to the smallest impacts possible, and other designs considered.
- Statement of why avoidance is not possible.
- Alternative analyses are not required for projects that meet the existing nationwide permit conditions with minimal adverse environmental impacts.
- Discuss practicality
 - Do not be too site-specific (e.g., bridge replacement)
- Discuss identified/discernible differences
- Discuss other significant adverse environmental consequences
- Discuss cost, available technology, availability of alternative and logistics
 - Compare alternatives
 - Compare with “normal” for similar projects

- Provide good baseline data and sufficient information.

Clean Water Act (PL-100-4) (33 USC 1251-1274)

The Clean Water Act (CWA) is the principal federal law that protects our nation's waters, including lakes, rivers, aquifers, wetlands and coastal areas. Formerly referred to as the Federal Water Pollution Control Act of 1972, its ultimate goal is to maintain the chemical, physical, and biological integrity of the nation's waters. Its interim goal is to make surface waters usable for fishing, swimming, etc. The CWA requires states to establish water quality standards and assess state water quality based on these standards. Sections 401 and 404 of the CWA pertain to the discharge of fill materials into waters of the United States (i.e., within the jurisdictional area(s)). Fill materials have the effect of or are used for the primary purpose of:

- replacing an aquatic area with dry land or
- changing the bottom elevation of a water body.

Jurisdictional areas are as follows:

- Waters of the United States
- Connected or adjacent to tributaries of navigable Waters of the U.S.

CWA gives the United States Army Corps of Engineers (USACE) authority to permit impacts to the jurisdictional areas mentioned above. USACE has sole authority make determinations related to the extent of its jurisdiction over a Water of the US and whether jurisdictional or state isolated wetlands are impacted by the project. Wetlands are delineated by using the *U.S. Army Corps of Engineers Wetland Delineation Manual*, January 1987. USACE makes a formal determination of jurisdictional or isolated wetlands. If a wetland is determined to be "isolated" by USACE, then it will fall under the jurisdiction of the Indiana Department of Environmental Management (IDEM). The function and value of wetlands impacted by the project will also be measured and investigated.

Section 404

Section 404 of the CWA is jointly administered by USACE and EPA. USACE administers Section 404 through the authorization of discharge(s) of dredged and/or fill material into "Waters of the U.S." Authorization for projects that propose to impact "Waters of the U.S." is dictated by the 404 permit process, which includes 404 Nationwide Permits (NWP) and 404 Individual Permits (IPs). Section 404(f) exempts some activities from regulation under Section 404. These activities include maintenance (but not construction) of drainage ditches, and many ongoing farming and silviculture practices.

Section 401

Section 401 of the CWA is administered by IDEM. In Indiana, anyone (including private citizens and business and federal, state, and local agencies) who wishes to discharge dredged or fill material into Waters of the U.S., must obtain a Section 401 Water Quality Certification (WQC) issued by IDEM. The applicant must demonstrate that activities will comply with Indiana water

quality standards and other provisions of federal and state law and regulations regarding conventional and non conventional pollutants, new source performance standards, and toxic pollutants.

A Section 401 WQC must be obtained before a Section 404 permit is granted. Section 401 of the federal CWA requires an applicant for a federal permit to conduct any activity that may result in a discharge of pollutants to water to first obtain a WQC from the state. Effectively, this means that anyone wishing to discharge pollutants to wetlands or other water bodies through activities such as filling, excavating or mechanical clearing must first receive authorization from IDEM.

Permits issued pursuant to Section 404 of the CWA trigger the need for a 401 WQC. IDEM works closely with USACE and coordinates the permit application process as much as possible. However, because both agencies have somewhat different authority/ jurisdiction, both agencies need to be contacted before any discharge to or activity in a Water of the U.S. If USACE decides a federal permit is needed, then a Section 401 Water Quality Certification must be obtained from IDEM. IDEM will review the proposed activity to determine if it will comply with Indiana law, including state water quality standards. A project may not proceed until INDOT has received a certification (or other authorization) from IDEM.

Nationwide Permits (NWP), created by USACE, encompass a set of similar project types with limited impacts which qualify for an automatic Section 404 permit, provided that conditions set within the specific nationwide and conditions set by USACE are met. NWPs are designed to expedite processing of projects which, individually and cumulatively, have little or no adverse effect on the environment. The CWA recognizes each state's right to deny certification for any of the NWPs, in recognition of that state's water quality standards, environmental protection goals, and its water resources. IDEM has denied Section 401 WQC for many NWPs (see Section 3.2.2.1) or applied conditions to certain NWPs, thereby subjecting these activities to Section 401 review. Many activities formally authorized by NWPs are now authorized under the Indiana Regional General Permit (RGP). USACE will determine whether a project falls under a NWP or the RGP. It is important to note that if a given project qualifies for a NWP, this does not necessarily mean that the project is exempt from Section 401 WQC.

If USACE determines that a Section 404 permit is not needed, then another form of authorization from IDEM may be needed. This is will be the case for "isolated wetlands" where USACE has determined that it has no basis for federal jurisdiction (see Section 1.4.2). Additionally, IDEM must be contacted to determine what, if any, state authorization is needed before an applicant may legally discharge pollutants (including fill material) into waters of the state.

EPA Section 404(b)(1) Guidelines

Section 404 of Clean Water Act requires approval by USACE for discharge of dredged or fill material into Waters of the U.S. This approval is contingent upon the project complying with the guidelines of Section 404 (b)(1) of the Clean Water Act. These guidelines are as follows:

- Least Environmentally Damaging Practicable Alternative (LEDPA) – There must be no practicable alternative to the proposed discharge, which would have less adverse impact

on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

- No violation of other laws – The project must not cause or contribute to violation of state water quality standards or toxic effluent standards; must not jeopardize the continued existence of federally listed endangered and threatened species or their critical habitats (except in rare circumstances involving an exemption under the Endangered Species Act).
- No significant degradation – The project must not cause or contribute to significant degradation of the Waters of the U.S.
- Minimize and mitigate adverse impacts – The project must include appropriate and practicable steps to minimize potential adverse impacts of the discharge on the aquatic ecosystem.

40 CFR Part 230, states the following:

...no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

This regulation defines **aquatic ecosystem** as the following:

...waters of the United States, including wetlands that serve as habitat for interrelated and interacting communities and populations of plants and animals.

This should be documented in the NEPA document. In order to comply with this regulation, USACE permit applications must show that the applicant has:

- taken steps to avoid wetland impacts where practicable;
- minimized potential impacts to wetlands; and
- provided compensation for any remaining, unavoidable impacts through activities to restore or create wetlands.

Single and Complete Project

USACE considers a project to have independent utility if it could or would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility. A single and complete project is defined at 33 CFR 330.2(i), as:

- The total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers

- For linear projects, the “single and complete project” (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., single water body) at that location.
- An exception is for linear project crossing a single water body several times at separate and distant locations: each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate water bodies.

Rivers and Harbors Act of 1899 (30 Stat. 1121) (33 U.S.C. 403)

Section 9 of the Rivers and Harbors Act states that construction of bridges or causeways performed in or over commercially navigable Waters of the U.S. must be authorized by the U.S. Coast Guard (USCG) through the issuance of bridge permits or permit amendments. Such bridges are regulated under Section 9 primarily to control horizontal and vertical clearances for commercial navigation.

Section 10 of the Rivers and Harbors Act, administered by USACE, requires a permit for all work (other than construction of bridges or causeways) performed in or over navigable Waters of the U.S., including dredging operations and pier construction in these waters. A list of Section 10 waters in Indiana is provided in Appendix E of this manual.

Executive Order 11990

Executive Order (EO) 11990, issued on May 24, 1977, requires each Federal agency to develop procedures to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. The EO states that each Federal agency...

shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds:

- (1) that there is no practicable alternative to such construction, and
- (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.

Based upon this, it is FHWA policy to undertake early public review of any plans or proposals for new construction in wetlands. FHWA developed procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement. FHWA also requires a "wetlands finding" in environmental documentation for projects impacting wetlands. FHWA policy requires that isolated wetlands be identified, characterized, and evaluated for the extent of impacts through the NEPA process. The decision to mitigate and how is a NEPA decision, guided by NEPA policy and other agency policy and objectives.

INDOT and FHWA evaluate practicable avoidance alternatives or options to impacting wetlands. If avoidance alternatives are not practicable, then practicable measures to minimize harm are

considered and included in the project. Therefore, as part of NEPA documentation, avoidance and minimization issues must be considered.

Tulloch Rule (65 Fed. Reg. 4550)

Mechanized land clearing, ditching, draining and stream channelization has long been problematic under the Clean Water Act because of confusion over whether the excavation and spilling of debris associated with these activities constitutes discharge of materials into Waters of the U.S.

The "Tulloch Rule", issued in 1993 by EPA and USACE, revised the definition of "discharge of dredged material" to include the incidental fallback of any excavated materials that occurs during dredging operations. A 1998 court decision, however, found that EPA and USACE lacked authority under the CWA to regulate such activities if conducted as to result in only "incidental fallback" (excavated material that falls back to substantially the same place as the initial removal). In May 1999, EPA and USACE issued a final rule modifying the definition of "discharge of dredged material" in order to respond to the Court's finding and to ensure compliance with the Court decision.

EPA and USACE proposed further rule revisions that were finalized and went into effect in April 2001. The final rule, 65 Fed. Reg. 4550, modifies the definition of "discharge of dredged material" by clarifying what types of activities EPA and USACE believe typically result in regulatable discharges, based on the nature of the equipment and agency experience. The rule indicates that EPA and USACE regard the use of mechanized earth moving equipment to conduct land clearing, ditching, channelization, in-stream mining, or other earth-moving activity in Waters of the U.S. as resulting in a discharge of dredged material, unless project-specific evidence shows that the activity results in only "incidental fallback."

In general, INDOT has little involvement with projects that need to utilize the Tulloch Rule. Ditch maintenance activities are typically not done utilizing the Tulloch Rule, rather the ditch maintenance exemption as specified in 33 CFR 323.4 (a)(3) and as described in Section 1.4.3.1. However, there may be some instances where a maintenance activity (e.g., debris cleanout surrounding a bridge) may exceed the permit limitations of the RGP or NWP and require INDOT to utilize the Tulloch Rule. In any case, the Tulloch Rule does not allow for side casting of materials. Any materials removed from a jurisdictional water should be removed from the waterway, placed into a hauling truck (or other secure means of removal), and disposed of at an upland location away from all aquatic resources subject to waterway permits. INDOT needs project specific evidence showing that the activity only results in incidental fallback. The volume and amount of material and the nature and distance of relocation are relevant in determining whether incidental fallback or a regulated discharge occurs.

SWANCC Decision (Case Law)

Solid Waste Agency of Northern Cook County (SWANCC) vs. U.S. Army Corps of Engineers was decided January 9, 2001 by the U.S. Supreme Court. SWANCC, a consortium of Chicago municipalities, selected an abandoned sand and gravel pit as a solid waste disposal site. The

bottom of the pit contained excavation trenches that became permanent and seasonal ponds and wetlands. The operation called for filling in some of the ponds and wetlands, so SWANCC applied for a Section 404 permit from USACE, but the permit was denied.

Section 404 of the CWA authorizes USACE to issue permits for the discharge of dredged or fill material into “navigable waters of the United States.” USACE defined its authority over hydrologically isolated wetlands, such as those at the SWANCC site, through its 1986 Migratory Bird Rule, which states that Section 404 extends to intrastate waters that provide habitat for migratory birds. The SWANCC decision held that USACE exceeded its statutory authority by using the Migratory Bird Rule to assert CWA jurisdiction over isolated wetlands. The Court’s decision is strictly limited to waters that are “nonnavigable, isolated, [and] intrastate.” USACE still regulates isolated wetlands that support interstate commerce, but the SWANCC decision prohibits USACE from using the Migratory Bird Rule as the sole basis for assertion of regulatory jurisdiction under the CWA in determining the interstate commerce connection. This decision also extended USACE’s authority under Section 404 to all wetlands adjacent to navigable or interstate waters and their tributaries. The decision approved definition of adjacent as “bordering, contiguous, or neighboring. Wetlands separated from other Waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are ‘adjacent wetlands’.” Adjacency is USACE’s call. Use historic connections on USGS topographic maps such as the following to determine adequate connection between a wetland and Waters of the U.S. to constitute jurisdiction

- Streams in piped/placed in culverts
- A surface connection or drainage way

“Adjacent” means bordering, contiguous, or neighboring. Wetlands separated from other Waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes and the like are “adjacent wetlands”.

At the time of the SWANCC decision, many states, including Indiana, did not have wetland regulations specifically for isolated wetlands. To regulate isolated wetlands in Indiana, the General Assembly enacted statutes giving IDEM authorization to regulate isolated wetlands through rule making and permitting. See I.C. § 13-18-22-1 *et seq.* Isolated wetland means wetlands not subject to regulation under Section 404(a) of the Clean Water Act.

Note that EO 11990 specifically identifies isolated aquatic resources as wetlands and requires the avoidance of construction in wetlands to the greatest extent practicable and include measures to minimize destruction, loss, or degradation of wetlands. EO 11990 requires federal agencies to take action to preserve and enhance the natural and beneficial values of wetlands.

Food Security Act of 1985 (PL-99-198)

The Food Security Act (FSA) of 1985 was signed by President Reagan on December 23, 1985. This Farm Bill contained wetland conservation provisions designed to remove certain incentives for people to produce agricultural commodities on converted wetlands (CW). FSA stipulates that anyone who produces an agricultural commodity on a wetland converted after 12/23/85 will not

be eligible to receive price support payments, farm loans, crop insurance, or other United States Department of Agriculture (USDA) benefits.

The wetland conservation provisions of the FSA are administered by the Natural Resources Conservation Services (NRCS). It is the responsibility of the NRCS to identify wetlands and make wetland determinations on agricultural farmland. These determinations are then provided to landowners who participate in USDA programs. In addition, these determinations are used to determine if potential wetland areas on agricultural farmland are subject to waterway permitting. More information regarding NRCS wetland determinations is included in Section 1.4.2.

Fish and Wildlife Coordination Act (PL-85-624) (16 USC 662(a))

Fish and Wildlife Coordination Act provides that when waters or channels of a body of water are modified by a federal agency, the federal agency shall first consult with the USFWS and with the head of the agency exercising administration over the wildlife resources of the state where the construction will occur (Indiana Department of Natural Resources [IDNR]), with a view to the conservation of wildlife resources. Section 1.6.2 discusses how INDOT performs ecological coordination.

Endangered Species Act of 1973 (PL-93-205) (16 USC 1531-1534)

The purposes of the Endangered Species Act of 1973 (ESA) are to protect federally endangered and threatened species and to provide a means to conserve their ecosystems. The ESA requires that all federal agencies protect these species and preserve their habitats. In Indiana, the Act is administered by the Department of Interior through the USFWS. INDOT ensures compliance with the ESA by performing ecological coordination as described in Section 1.6.2.

For waterway permits, compliance with the ESA is a prerequisite for obtaining a 404 permit. The reason for this is twofold:

1. INDOT must complete Section 7 requirements in the NEPA process because federal funds and approvals are likely required.
2. USACE must document the ESA requirements have been fulfilled by the permit applicant prior to being able to authorize a project as a federal permitting agency.

General Condition 13 of the Indiana RGP states the following:

13. Endangered Species: The permittee shall not perform any work under the RGP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. The permittee shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work under the RGP until notified by the District Engineer that the requirements of the Endangered Species Act have

been satisfied and that the activity is authorized. Authorization of an activity under the RGP does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act.

Coastal Zone Management Act of 1972 (PL-101-508)

The Coastal Zone Management Act of 1972 (CZMA) requires that all federal actions likely to affect any land or water use or natural resource of coastal areas must be consistent with the state's coastal management program. IDNR implements the Lake Michigan Coastal Management Program (LMCMP) in cooperation with other state agencies and local governments. The LMCMP implements the federal consistency provisions of the CZMA and promotes the wise management of those land and water uses that have direct and significant impacts upon the Lake Michigan coastal area. The federal consistency provisions of the CZMA act to bring federal actions into compliance with approved state coastal management programs and also increase state and local participation in federal decision making. In Indiana, there is no permitting authority associated with the LMCMP; it is a grant program.

Coastal Management Act of 1998

The Coastal Management Act of 1998 is a state law that authorizes the IDNR to implement the Lake Michigan Coastal Management Program, in cooperation with other state agencies and local governments. No permitting is required in Indiana for this program.

Wild & Scenic Rivers Act (PL-90-542)

The Wild & Scenic Rivers Act is a federal law that establishes the policy that certain rivers of the nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geological, fish and wildlife, historic, cultural, or other similar values. These rivers shall be preserved in free-flowing condition, and their immediate environments protected for the benefit and enjoyment of present and future generations. This Act established a system of National Wild and Scenic Rivers to protect selected rivers and their surrounding environment. Indiana currently has no National Wild and Scenic Rivers.

1.3 Environmental Permitting Agencies

United States Army Corps of Engineers (USACE)

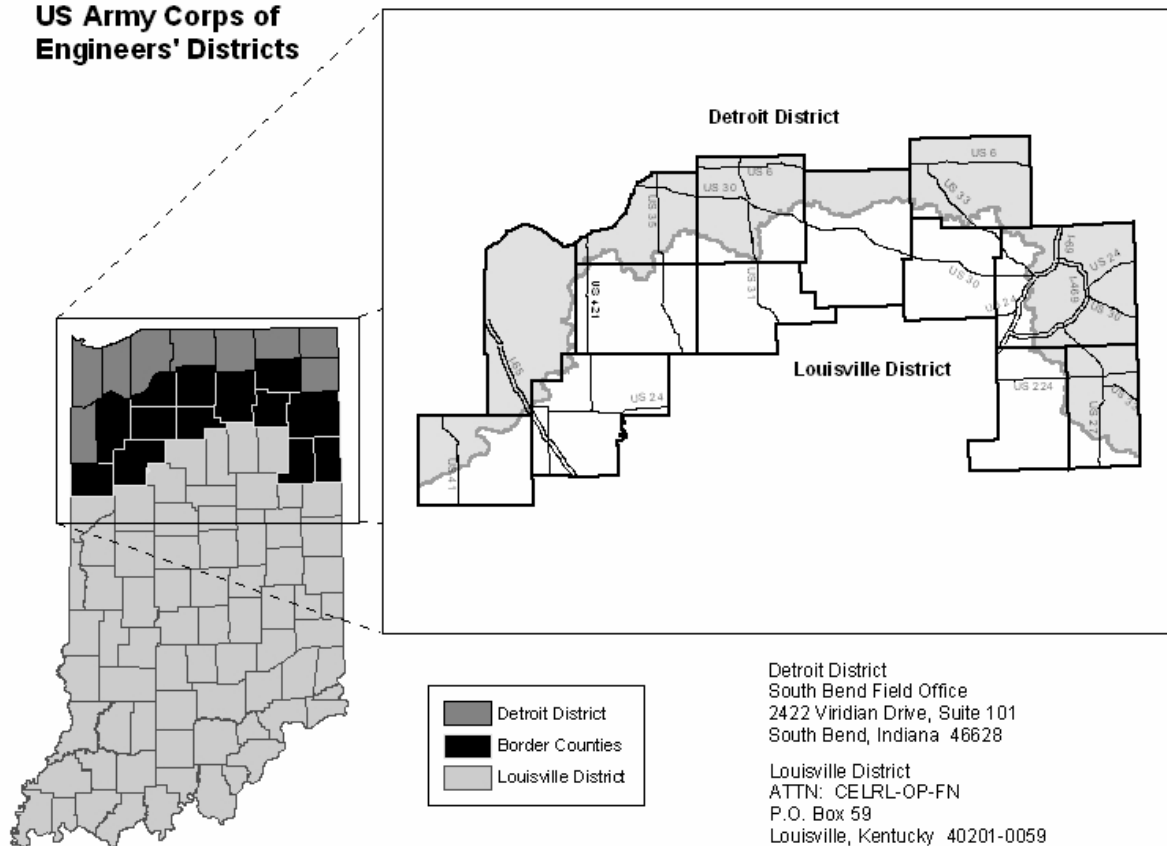
USACE has been involved in regulating certain activities in the nation's waters since 1899. As a result of several new laws and judicial decisions in the 1960s and 1970s, the program evolved from one that focused primarily on navigation to one that considers an array of public interest factors. USACE has jurisdiction over all Waters of the U.S. In general, USACE jurisdiction occurs at or below the Ordinary High Water Mark (OHWM) or at the wetland/upland boundary. There are three USACE districts with jurisdiction in Indiana: Louisville, Detroit and Chicago District. See the following map for the boundaries of the districts. Currently, permitting is handled by the Detroit Corps for both Detroit and Chicago jurisdictional areas.

Section 404. The Section 404 permitting program, for the discharge of dredged or fill material into Waters of the U.S., is administrated by USACE. Its duties include: making individual permit decisions and jurisdictional determinations (including isolated vs. non-isolated wetland determinations); developing policy and guidance; and enforcing Section 404 provisions. In evaluating 404 permit applications, USACE must follow the 404(b)(1) guidelines developed by EPA. Furthermore, the Louisville District USACE published *Mitigation Guidelines*, <http://www.lrl.usace.army.mil/orf/article.asp?id=273>, for projects involving the discharge of dredged or fill material into Waters of the U.S.

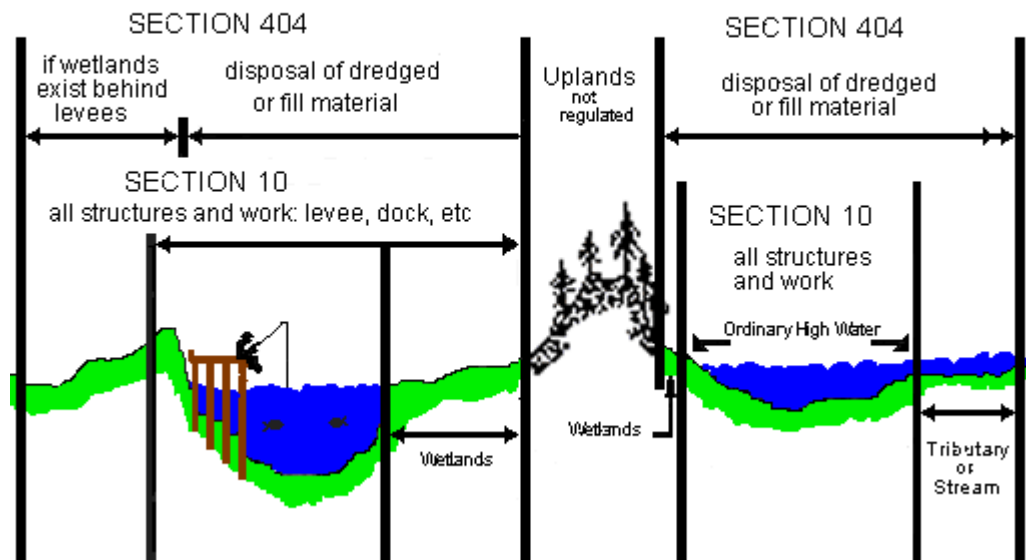
Section 10. Permits required by Section 10 of the Rivers and Harbors Act are also administered by USACE. USACE reviews applications for projects (other than construction of bridges/causeways) performed in or over navigable Waters of the U.S., including dredging operations and pier construction in these waters.

Levee Permit. A USACE Levee Permit is required when a project affects a levee system owned by USACE. A permit from USACE is necessary before any work can be initiated which may affect the levee. The purpose of the levee permit program is to ensure continuous levee system integrity. The actual permit form may vary, depending on to whom it is initially sent. The regulations are included in the *Code of Federal Regulations*, as promulgated in Chapter II - Corps of Engineers, Department of the Army, Section 208.10 - Flood Control Regulations for Local Flood Protection Works; Maintenance and Operation of Structures and Facilities. The graphic on the next page provides guidance concerning various USACE regulatory jurisdictions.

US Army Corps of Engineers' Districts



Crosscut View of Regulatory Jurisdiction



U.S. Coast Guard (USCG)

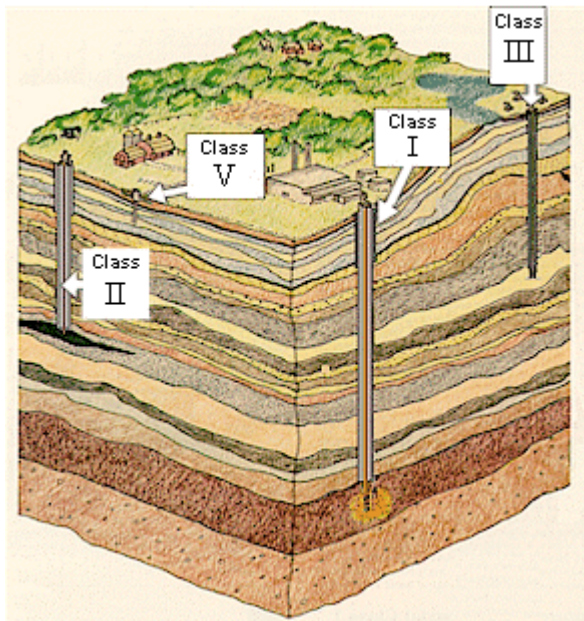
Section 9. The U.S. Coast Guard (USCG) is authorized under Section 9 of the Rivers and Harbors Act to issue bridge permits or permit amendments involving construction of bridges or causeways performed in or over navigable Waters of the U.S. Section 9 permits are primarily to control horizontal and vertical clearances for commercial navigation in waters designated as navigable Waters of the U.S. The U.S. Coast Guard determines the navigability of a water body. Most of Indiana lies within the 8th Coast Guard District and permitting is done through the St. Louis, Missouri Commander's Office. The northern portion of Indiana above the 41st parallel is under the jurisdiction of the 9th Coast Guard District headquartered in Cleveland. (See following map).



U.S. Environmental Protection Agency (EPA)

Section 404. Section 404 of the Clean Water Act allows EPA to review and comment on individual 404 permit applications, evaluate specific cases, determine scope of geographic jurisdiction, approve and oversee state assumption of 404 program, and identify activities that are exempt from regulation under Section 404. Using the Section 404(b)(1) guidelines, EPA develops and interprets the environmental criteria used by USACE in evaluating 404 permit applications. EPA can also veto 404 permit decisions by USACE and may take enforcement action against unauthorized activities.

Class V Injection Wells. Class V injection wells are currently regulated by EPA through the UIC (Underground Injection Control) program, under the authority of the Safe Drinking Water Act. Any injection well that does not fit into Classes I through IV is, by default, a Class V injection well. There are dozens of different types of Class V injection wells. These wells are usually shallow and simply constructed devices (such as septic systems and drywells). The potential for Class V injection wells to pollute ground water varies widely, depending on the amount and kinds of fluid going into the well, the construction of the system, kinds of soil and other underground materials, depth to ground water, etc. Some types of Class V wells are generally banned (large capacity cesspools and motor vehicle waste disposal wells), while most others are authorized by rule or permit. Sanitary wastewater disposal wells (multi-family and large commercial septic systems) and storm water runoff and other drainage wells are by far the most common types of Class V injection wells. Less common, but still significant numbers of Class V wells are used to dispose of commercial or industrial wastewater, motor vehicle service related fluids, and in some areas, agricultural drainage.



NOTE: This drawing is NOT to scale. Most injection wells are less than one foot in diameter and hundreds or thousands of feet deep.

Sole Source Aquifer. The Sole Source Aquifer (SSA) Protection Program is authorized by Section 1424(e) of the Safe Drinking Water Act of 1974 (Public Law 93-523, 42 U.S.C. 300 et. seq). It states that:

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for

any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

EPA defines a sole or principal source aquifer as one which supplies at least 50 percent of the drinking water consumed in the area overlying the aquifer. These areas can have no alternative drinking water source(s) which could physically, legally, and economically supply all those who depend upon the aquifer for drinking water. All designated sole or principal source aquifers are referred to as "sole source aquifers" (SSA). Indiana's only SSA is located mainly in St. Joseph and Elkhart Counties (see Section 3.4.2 for a map of the St. Joseph and Elkhart Counties SSA). Most of this aquifer is an unconfined aquifer that is open to contamination from the infiltration of surface water.

Indiana Department of Environmental Management (IDEM)

401 Water Quality Certification. Under authority of Section 401 of the Clean Water Act, IDEM administers the 401 Water Quality Certification (WQC) program. This program involves discharges of dredged or fill material into waters of the state. IDEM's Office of Water Quality, Section 401 WQC/State Isolated Wetlands Program, is responsible for reviewing applications and issuing 401 WQC for projects that would physically impact waters of the state, including streams, lakes and wetlands.

Rule 5 (327 IAC 15-5). The requirements of Rule 5 apply to construction activity (which includes clearing, grading, excavation and other land disturbing activities) that results in the disturbance of **one (1) acre** or more of total land area. If the land disturbing activity results in the disturbance of less than 1 acre of total land area, but is part of a larger project whose total land area of disturbance is greater than one acre, it is still subject to Rule 5 permitting. Since the NPDES general permit for storm water runoff associated with construction activity is a permit-by-rule, no actual permit is issued. The applicant receives either a Notice of Sufficiency or a Notice of Deficiency. If you receive a Notice of Deficiency, an amended Notice of Intent (NOI) must be submitted to IDEM before the initiation of land disturbing activities.

Isolated Wetlands. Isolated wetlands (wetlands which are not subject to USACE jurisdiction) are regulated by the IDEM under the isolated wetland statute and rules. I.C. § 13-18-22-1 *et seq.*

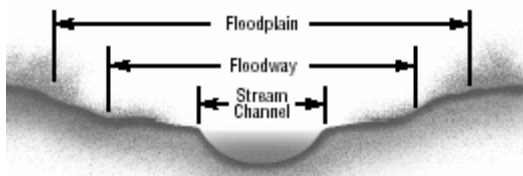
Section 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit. The National Pollutant Discharge Elimination System program's intent is to maintain and enhance the quality and integrity of the Nation's waters. A permit must be obtained for any non-storm water point-source discharge of pollutants to a water body. In addition, an individual permit is required if the receiving body is categorized as "exceptional use." A typical activity requiring a point-source discharge permit is the construction of a rest area wastewater treatment plant. For the NPDES - Point Source Rule 2 Permit, the United States Environmental Protection Agency is the ultimate agency with oversight responsibility for enforcement, management, and

implementation of the permit program. IDEM is the State agency that has the responsibility for the daily execution of the permit program (e.g., establishing program procedures, reviewing permit applications, issuing permits).

Indiana Department of Natural Resources (IDNR)

Construction in a Floodway. The General Assembly empowered IDNR with the responsibility to oversee various construction activities within, over and/or under the State's waterways through the creation of a number of regulatory programs. These statutes were enacted to allow the State's water related resources to be utilized in a prudent manner while simultaneously minimizing induced flood related damages and protecting Indiana's natural and cultural resources.

The Flood Control Act ([IC 14-28-1](#)) regulates various development activities (e.g., structures, obstructions, deposits, and/or excavations) within the floodway of any State waterway by requiring IDNR approval prior to the beginning of the project. IDNR authority under the Flood Control Act is further defined in [312 IAC 10: Floodplain Management](#).



Navigable Waterways. For Indiana Navigable Waterways, IDNR, Division of Water is the State agency with overall responsibility for administering the program, reviewing applications, and issuing approvals. The purpose of the IDNR Navigable Waterways Permit is to protect those waterways that have been designated by the State as navigable.

Dewatering Well Installation. A dewatering well installation, if temporary, requires a report to be sent to IDNR, Division of Water. If the well is permanent then a registration of the well is required. Indiana Code provides protection for domestic well owners against the impact of high capacity ground-water pumpage if it substantially lowers water levels, resulting in the failure of a domestic well. INDOT or its contractors may be liable under this statute if dewatering operations associated with construction result in failure of neighboring domestic wells.

Water Well Abandonment. IDNR's water well drilling law requires that abandoned wells must be sealed, by a licensed driller, with either a threaded or welded cap over the casing or by filling the well casing with impermeable material. The procedure for well abandonment is very specific and should not be attempted without consulting the Construction Management Section for complete instructions. The licensed driller is responsible for submitting Record of Water Well Form 35680 to the IDNR.

Lakes Preservation Act. The Lakes Preservation Act requires approval from IDNR before modifications can be made to the level or shoreline of any public freshwater lake. IDNR authority under the Lakes Preservation Act is further defined in [312 IAC 11: Public Freshwater Lakes](#). A permit must be obtained from IDNR before any project may be initiated that is at or lakeward of a public freshwater lake's legal or average normal shoreline. A public freshwater lake is defined by the rules as the following:

...a reasonably permanent body of water substantially at rest in a depression in the surface of the earth, if both the depression and the body of water are of natural origin or part of a watercourse. If part of a watercourse, a lake may be formed by damming a river or a stream.

Lowering of Ten Acre Lakes Act. The Lowering of Ten Acre Lakes Act ([IC 14-26-5](#)) regulates all ditch and/or drain work that is both located within ½ mile of a freshwater lake's shoreline and has a bottom depth below the lake's normal water level. The Act requires a permit from IDNR prior to the beginning of the project.

County Drains

Regulated Drain Permit. The purpose of the Regulated Drain Permit is to notify the county of INDOT's proposed construction that may impact a regulated drain. All construction projects that will impact regulated drains must have plans submitted for review/approval by the county drainage board. The counties are notified by sending a set of plans and an invitation to the preliminary field check to the county surveyor's office. Five counties require permits before INDOT performs any construction impacting regulated drains. These are five counties are: Allen, Elkhart, Hamilton, Lake, and LaPorte.

1.4 Aquatic Resources Subject to Waterway Permits

Typically, INDOT projects involve multiple aquatic resources and consequently multiple regulatory requirements with several regulatory agencies. This section discusses jurisdictional limits and regulatory requirements of specific aquatic resources as they relate to INDOT projects.

During a year with normal patterns of precipitation, "open water" areas have standing or flowing water for a sufficient duration to establish an ordinary high watermark (OHWM). Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. These areas include streams and parts of lakes and ponds. While both wetlands and open waters are Waters of the U.S., they may be treated differently by USACE for permitting and mitigation purposes. Lakes and ponds may also be subject to waterway permits. The final determination of jurisdictional authority will be made by USACE.

Under the Clean Water Act, USACE has authority to regulate and authorize the discharge(s) of dredged and/or fill material into "Waters of the U.S.". Waters of the U.S. include all interstate waters such as lakes, rivers, streams, and non-isolated wetlands. A detailed definition of Waters of the U.S. and further explanation of the jurisdictional limits of streams, lakes, and wetlands can be found in 33 CFR 328. Waters of the U.S. include "Navigable Waters of the U.S.", which are

discussed in Sections 1.4.3 and 3.6.3. USACE definition of “Navigable Waters of the United States” is as follows:

...those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past or may be susceptible to use to transport interstate or foreign commerce. These are waters that are navigable in the traditional sense where permits are required for certain activities pursuant to Section 10 of the Rivers and Harbors Act. This term should not be confused with the term waters of the United States **Waters of the United States** is a broader term than navigable waters of the United States defined above. Included are adjacent wetlands and tributaries to navigable waters of the United States and other waters where the degradation or destruction of which could affect interstate or foreign commerce. These are the waters where permits are required for the discharge of dredged or fill material pursuant to Section 404 of the Clean Water Act.

USACE performs jurisdictional determinations, which are site surveys/document reviews to officially determine whether a given parcel of land is subject to regulation as waters of the United States, and if so, the extent of the area. This generally applies to wetlands, but may also be used to determine jurisdictional issues with respect to streams, ditches, and similar areas which include waters connected or adjacent to tributaries of navigable waters of the U.S.

1.4.1 Streams

USACE regulatory jurisdictional limit on streams begins at the elevation known as the ordinary high water mark (OHWM). The OHWM is defined in 33 CFR 328.3(e) as

...that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

The frequency and duration at which water must be present to develop an OHWM has not been established for the USACE regulatory program. USACE makes a jurisdictional determination if an area is subject to regulation. USACE evaluates each situation on a case by case basis by using its judgment and the criteria listed in 33 CFR 328.3(e). Roadside drainage ditches are unique and may or may not be subject to 404/401 regulation. Refer to Section 1.4.3.1 of this document for guidance on roadside ditches.

Regulatory requirements may vary based on whether water flow in a stream is continuous or periodic. Three hydrological terms are used in 404/401 permitting to describe the water flow regime in a stream channel:

- Perennial Stream - A stream that has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the

primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

- **Ephemeral Stream** - A stream with flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow. An ephemeral stream is not a “water of the U.S.” unless it has an ordinary high water mark and a defined channel.
- **Intermittent Stream** - A stream that has flowing water during certain times of the year, when groundwater provides for stream flow. During dry periods, intermittent streams may not have flowing water. Precipitation is a supplemental source of water for stream flow. An intermittent stream is ordinarily dry for more than three months per year. It is delineated with dashed lines on USGS maps.

1.4.2 Wetlands

Wetlands Subject to Jurisdiction by USACE or IDEM

An area is considered to be a wetland if it has the appropriate hydrology, soils, and plants to meet wetland criteria as defined in the *1987 USACE Wetland Delineation Manual*. USACE makes a jurisdictional determination to officially establish whether an area is considered a wetland. USACE may also define the extent of the area to be regulated. Wetlands are Waters of the U.S. and regulated by USACE and IDEM through Sections 404 and 401 of the Clean Water Act, unless they are determined to be hydrologically isolated.

Isolated wetlands are regulated by IDEM’s Isolated Wetland Permit Program. USACE makes the determination of whether a wetland is considered to be isolated. An isolated wetland determination is based on a multitude of factors, including, but not limited to, the presence or absence of a surface water connection or hydric soils units.

Wetlands Subject to Jurisdiction by Natural Resources Conservation Service (NRCS)

Wetland areas that occur on or within agricultural farmland fall under the jurisdiction of the NRCS. The NRCS makes a determination of wetlands in a similar manner to USACE. However, the NRCS categorizes wetlands on agricultural land into five primary categories: Prior Converted (PC), Wetland (W), Farmed Wetland (FW), Converted Wetland (CW), and Artificial Wetland (AW). These determinations are used in association with incentive programs with landowners who participate in USDA programs under the Food Security Act (FSA). In addition, these categorizations can also be used to determine if a wetland on farmland is subject to waterway permitting (i.e., 404, 401 or isolated wetland permits).

Prior Converted Cropland. Prior Converted Cropland (PC) are areas that were cleared, drained, or filled and cropped before December 23, 1985 and have been maintained as cropland. PC areas may be farmed and maintained or improved in any way, as long as it continues to be used to grow annually planted crops or hay in rotation. Essentially, PC areas are no longer

wetland areas and are not subject to waterway permitting. However, PC areas which are not maintained for a period of more than 5 years and return to a functional wetland, could be subject to waterway permitting.

Wetland. A wetland (W) is a wet area that is not normally cropped, but may be cropped in dry years; has wetland hydrology, soils, and vegetation. These areas may be farmed during dry years, however, any modifications (i.e., clearing, filling, etc.) may change their status to CW and affect the farmers benefits. Areas marked as W are subject to waterway permits. By definition, Farmed Wetlands (FW) are areas that were cleared, drained, filled or otherwise manipulated, and cropped before December 23, 1985; and are saturated or have enough ponded water that in most years the area is too wet to plant or harvest.

Farmed Wetland. Essentially, these areas are still functioning as wetlands and still manage to meet all three criteria for a wetland. A farmer could still continue to attempt to farm or maintain existing drainage on a FW without any permit implications; provided the FW area is being managed/maintained in the same manner as it was prior to December 23, 1985. However, if the land use in the subject area were to change to something other than agricultural crop production, then the FW area would become a wetland area subject to waterway permitting.

Converted Wetland. Converted Wetlands (CW) are areas that were cleared, filled, and/or otherwise changed in order to plant annual crops on or after December 23, 1985. These areas have been modified to the extent that they are no longer functioning as wetlands and are not subject to waterway permits; however, farmers could lose USDA benefits for planting crops on areas labeled as CW or by converting an area designated FW or W to CW.

Artificial Wetlands. Artificial Wetlands (AW) are areas that are man-made on an area that was not wetland at the time of construction or other disturbance. These areas may contain wet areas that have been inundated or manipulated. These may include farm ponds, lakes, pits, or water trapped by man made levees, dikes, road impoundments, or undersized culverts. They may be converted back to cropland by the farmer and are not subject to waterway permits.

1.4.3 Other Aquatic Resources

As described in 33 CFR 329, “navigable Waters of the U.S.” are those Waters of the U.S. that are presently used, have been used in the past, or may be susceptible to use in transporting interstate or foreign commerce. Navigable Waters of the U.S., including lakes, reservoirs, and shipping channels, are subject to permits required for certain activities pursuant to Section 9 and/or 10 of the Rivers and Harbors Act of 1899. A list of Section 10 waters in Indiana is provided in Appendix E.

“Vegetated shallows” are permanently inundated and under normal circumstances have rooted aquatic vegetation. They are special aquatic sites under the Section 404(b)(1) guidelines. Vegetated shallows are considered to be open water.

1.4.3.1 OES Technical Guidance on Roadside Ditches

This technical guidance has been developed to provide a consistent characterization of roadside ditches in INDOT project Ecological Survey Reports (ESR). The guidance is based on the US *Army Corps of Engineers Standard Operating Procedures for the Regulatory Program* (1999). **While the information presented in the ESR will be considered by USACE, the final jurisdictional determination on Waters of the U.S. will be made by USACE.**

1. Roadside Ditches that are not Waters of the U.S. Roadside ditches constructed in uplands, and/or located along a roadway or railroad that only carry water from upland areas are **not** considered jurisdictional, even though the ditches may be dominated by hydrophytic vegetation. Any construction or maintenance activities involving these upland drainage ditches are exempt from 404 regulations and do not need to be addressed in the ESR.

2. Roadside Ditches that Qualify as Waters of the U.S. Existing ditches that meet the following criteria are to be considered jurisdictional and must be included in a project ESR. The maintenance (restoration to the original configuration) of these drainage ditches is exempt from regulation (as specified in 33 CFR 323.4(a)(3)); however, projects involving impacts to these ditches in the form of widening, deepening, or relocation must be authorized through the 404 permitting process.

A. Channelized or Captured Stream: Roadside ditches will be considered a channelized or captured stream if they are constructed in Waters of the U.S. **or** connect two Waters of the U.S., **and** they possess a defined Ordinary High Water Mark (OHWM), **and** they possess a defined channel and evidence of stream flow. Secondary source information, including (but not limited to) soil surveys and topographic mapping, can be used to determine the presence of potential jurisdictional channelized or captured streams. Often these streams appear as a “blue line” on USGS 7.5 minute topographic mapping, and some are named. Caution should be used when referencing this information, however, since many of the smaller “blue line” drainage ditches and drainage flow lines on soil survey mapping do not possess an ordinary high water mark in the field; therefore, they would not be considered streams.

B. Wetland: Roadside ditches will be considered wetlands if they possess all three of the criteria necessary to meet the definition of a jurisdictional wetland (hydrology, soils, and plants), **and** they are no longer confined to the designed configuration of the constructed ditch. The following are examples:

1. Wetland areas that have formed due to the lack of maintenance of a culvert or ditch which has become clogged or aggraded causing prolonged inundation in areas adjacent to the original ditch configuration.

2. Ditch constructed through an existing wetland or contiguous to an existing wetland.

C. Other Waters: Roadside ditches will be considered other Waters of the U.S. if they do **not** possess the characteristics of a wetland or a channelized or captured stream. They are

Waters of the U.S. if they have been constructed in such a way to extend the OWHM of an existing Section 10 navigable water **or** they have been excavated through Waters of the U.S. The following are examples:

1. Ditches that do not possess the characteristics of a wetland or a channelized or captured stream, but have been excavated through a wetland.
2. Ditches that extend the OHWM of a water of the U.S., such as to ditches within the influence of waters of Lake Michigan.

It should be noted in the ESR that all roadside ditches within a project study area have been investigated to determine the presence of any of the above criteria, and that roadside ditches that did not meet any of these criteria were considered non-jurisdictional and excluded from the ESR (based on this guidance and the *Army Corps of Engineers Standard Operating Procedures for the Regulatory Program*, 1999). Should there be any questions whether ditches are Waters of the U.S. contact USACE for specifics and document the discussion to the file.

1.5 The Role of INDOT's Office of Environmental Services - Waterway Permits Unit (WPU)

OES is responsible for guiding transportation projects through INDOT's program by providing interdisciplinary review and ensuring environmental compliance with all local, state and federal laws and regulations. OES develops policy and direction for integrating environmental decisions into all operations within INDOT projects. In addition, OES staff educates and trains INDOT and agency personnel, consultants and the public on the State's environmental requirements as they pertain to transportation.

The Waterway Permits Unit (WPU) within the Ecological and Permitting Section of the OES reviews INDOT projects which impact aquatic resources subject to waterway permits. The WPU determines the appropriate type and level of waterway permitting needed. The WPU is responsible for development, review and processing of waterway permits as well as coordinating the necessary permits with USACE, EPA, IDEM, IDNR and USCG. The WPU prepares various types of waterway permit applications. Individual 404/401 permit conditions are often negotiated by the WPU with the resource agencies. The WPU, in conjunction with the Ecology Unit, develops and/or reviews all stream and wetland mitigation proposals associated with INDOT projects. All waterway permit mitigation and conditions shall be incorporated into the construction plans or special provisions for implementation during project construction.

Enforcement

Notification of violations of the Clean Water Act may come to the districts from two directions. The first will be from the permitting agency or its representative notifying the project engineer or project supervisor directly of problems that exist. The district will work with these agencies to resolve issues of concern that are brought to its attention.

The second will come from INDOT's OES. The WPU may be informed of the violations from the permitting agency and will pass the information on to the Area Construction Engineer or District Coordinator. INDOT's WPU may conduct spot inspections during various construction phases on active projects in each district to determine if INDOT is in compliance with the permits that were granted by the various agencies. The WPU representative will stop at the construction office to inform the project engineer or project supervisor of the inspection. The WPU will inspect the project site for violations with regards to the installation of erosion control methods, maintenance of those methods, overall plan installation, and areas of weakness that will allow eroded material to reach the waters of concern, along with inspecting for compliance with all other permit and environmental conditions. The WPU person will inform the project engineer or project supervisor and the Construction Area Engineer of any observed violations that would place the project in noncompliance with the permit and any other environmental commitment. The district will have ten calendar days to make corrections that will bring the project back into compliance. This inspection is to help keep INDOT on track and prevent violations from occurring but does not usurp the rights of the permitting agencies to review, inspect or find INDOT in violation of the permit.

Ultimately, it is the responsibility of the project manager, project engineer, or project supervisor to ensure compliance with all permit conditions and environmental commitments. Likewise, it is the responsibility of the project manager, project engineer, or project supervisor to ensure that all permits remain valid during the construction period of the project. If a permit is set to expire while the project is still under construction, the project manager, project engineer, or project supervisor will notify and submit extension information to OES at least 150 days prior to the permit expiration date.

1.6 Prerequisites for Permit Applications

This section is an overview of processes/documentation that may need to be accomplished prior to the permitting process. In many cases, the results of these individual processes are included in the permit application(s). The nature and extent of impacts to aquatic resources are used to determine the level and type of waterway permits and which prerequisites may apply.

1.6.1 USACE, Jurisdictional Determination/Isolated Wetland Determination

In order to determine if an area is subject to regulation as Waters of the U.S., USACE may perform a jurisdictional determination (JD). The jurisdictional determination takes into account all aquatic resources subject to waterway permits, including streams, ponds, lakes, wetlands, ditches, and/or special aquatic sites. A USACE jurisdictional determination can be obtained during the ecological coordination process, during the process of completing NEPA documentation, or during the design of the project.

For projects that have minimal impacts and will likely qualify for a Regional General Permit (RGP) or a Nationwide Permit (NWP), USACE may choose not to perform a JD in advance of the permit application. Once a JD has been made by USACE, it is typically valid for five years.

When assessing streams during a JD process, USACE may establish its regulatory jurisdiction by confirming the presence/location of an ordinary high water mark (OHWM). Roadside drainage ditches, including those with apparent wetland characteristics, may or may not be subject to USACE regulation. Refer to Section 1.4.3.1 for guidance on roadside ditches.

When assessing wetlands during the JD process, USACE considers whether potential wetlands have the appropriate hydrology, soils, and plants to meet wetland criteria as defined in the 1987 USACE Wetland Delineation Manual. USACE may also define the extent of the area to be regulated. For any wetland, the regulatory jurisdiction (for USACE and/or IDEM for isolated wetlands) begins at the wetland/upland boundary.

In addition to verifying wetlands and their boundaries, USACE also makes the determination of whether a wetland is considered to be isolated, often referred to as an isolated wetland determination. An isolated wetland determination is based on a multitude of factors, including, but not limited to, the presence or absence of a surface water connection to a navigable waterway (or tributary to a navigable waterway) or contiguous hydric soils units. Isolated wetlands (see Section 3.5.4) are regulated by IDEM's Isolated Wetland Program.

As part of the wetland delineation and/or field review data collection, wetlands shall be delineated to determine the classification of the wetlands. This information will be documented in the Ecological Survey Report and/or Wetland Delineation Report. An Ecological Manual will be prepared in the near future which will outline guidance on the preparation of the Ecological Survey Report. Until that time, when Ecological Coordination and/or Pre-Application Coordination is conducted for projects involving wetlands, the transmittal letter to USACE will include a listing of wetlands with INDOT's preliminary determination of their jurisdictional status (isolated vs. non-isolated) to assist USACE in its isolated waters determination(s).

1.6.2 Ecological Coordination

Ecological coordination will be conducted to meet the NEPA interagency coordination requirements, Fish and Wildlife Coordination Act and Endangered Species Act requirements, and to provide pre-application coordination for waterway permits. This process will be documented in the Ecological Manual, which will be prepared in the near future. Once documentation requirements are provided in the Ecological Manual, this information will be a pre-requisite for making a permit determination.

1.6.3 Cultural Resources

Section 106 of the National Historic Preservation Act (NHPA) of 1966 requires federal agencies to consider the effects of their projects on historic properties. In addition, if a federal nexus is created (i.e., federal funding, transfer of ownership, licensing, or federal permits), Section 106 will apply. As part of a Section 106 review, INDOT must consult with the State Historic Preservation Officer (SHPO) to get its comments on the project's effect on historic properties.

The official list for historic properties is the National Register of Historic Places (NRHP). Historic properties are broken down into five categories: buildings, structures, sites, objects and

districts. Section 106 requirements apply to properties that are listed on the NRHP and ones that may be eligible for inclusion on the NRHP.

INDOT's OES-Cultural Resources Section will be establishing procedures and guidelines for following the requirements of Section 106 and SHPO. The results of cultural resources coordination and documentation should be completed by a qualified historian/archeologist prior to any federal permit being issued. For waterway permits, cultural resources coordination is a prerequisite for obtaining a 404 permit, whether it is a NWP, RPG or an individual 404 permit. The reason for this is twofold:

1. INDOT must complete Section 106 requirements in NEPA when federal funds and approvals are likely required.
2. USACE must document that Section 106 requirements have been fulfilled by the permit applicant prior to USACE being able to authorize a project as a federal permitting agency.

General Condition 14 of the Indiana RGP states the following:

Historic Properties: The permittee shall not perform any activity under the RGP which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places until the District Engineer has complied with the provisions of [Appendix C of] 33 CFR Part 325. The permittee must notify the District Engineer if the activity authorized by the RGP may affect any historic properties listed, determined to be eligible or which the permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin construction until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Indiana Department of Natural Resources, Division of Historic Preservation and Archaeology.

If the permittee discovers any previously unknown historic or archaeological remains while accomplishing the activity authorized by the RGP, work must be immediately stopped and this office immediately notified of what you have found. The District will initiate the Federal, tribal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

2.0 PERMIT PROCESS

2.1 Permit Determination (PD) Submission

A permit determination (PD) is a process by which the appropriate level of waterway permitting is documented by OES Waterway Permits Unit. In the minor project development process, a preliminary PD package shall be submitted to OES after completing Step 3 - Preliminary Engineering and Environmental Field Studies, including completion of the Environmental Site Assessment Screening. In the major project development process, a preliminary PD package shall be submitted to OES after selection of a preferred alternative. If there are questions concerning this, contact OES.

A preliminary PD package must be submitted to OES Waterway Permits Unit for review and an official PD. **Any submittal from district to central office or vice versa must go through the District Coordinator.** Wetlands and waterway mitigation requirements should be coordinated with the OES Waterway Permits Unit prior to the time permit information is due. It is the responsibility of the designer to ensure that all appropriate mitigation commitments are incorporated into the design of the project. All mitigation commitments are to be documented within the Project Commitments Sheet, an example is contained in Appendix R. This information should be sent to the following address:

Waterway Permits Unit Supervisor
INDOT-OES, 6th Floor
100 N. Senate Avenue
Indianapolis, Indiana 46204

INDOT district offices are responsible for submitting PD packages to OES Waterway Permits Unit which should include the following items:

- Title Sheet
- Applicable General Notes (e.g. do not disturb wetland areas)
- Plan and Profile Sheets
- Structure Detail and Data Sheets, including drainage area
- Cross Section Sheets
- Ordinary high water elevation
- Drawings of any proposed temporary construction access fills
- Ecological information regarding types of streams and wetlands that may be impacted and estimation of impacts to those resources.
- Designed wetlands mitigation sites
- The delineation of the impacted wetlands/Waters of the U.S.
- The proposed mitigation plan
- The wetlands monitoring plan

Other tasks (see Section 1.6) to be performed prior to submission of a preliminary PD package that are critical to OES review of a PD package may include:

- Ecological Documentation
- Section 106/SHPO Documentation
- Endangered Species Documentation

The most common mistake made by applicants is to wait until the last minute to apply for permits. Permitting agencies have time frames and tasks which are mandated by law and these timeframes cannot be accelerated to accommodate a project's schedule. For example, IDEM must publish notice of the receipt of an application for 401 WQC and the notice must run for 21 days. When IDEM does render a decision, the decision does not become effective until 18 days have passed, to allow for a mandated appeal period. Applying early has the additional benefit that if the permitting agency has a significant issue, there will be time to revise and adjust the plans. The designer should track the status of permit expiration dates to ensure that valid permits will be available for the current project construction schedule.

PERMITTING TIME FRAMES¹

Agency	Permit type	Average Agency Review Time (in months)	Number of Months Application Packages Need to be Given to OES-WPU Before RFC Date
USACE	Section 10	2 months	7 months
USACE	404 Individual Permit	12 to 18 month	20 months
USACE	404 Nationwide Permit	3 to 6 month	9 months
USACE/IDEM	404/401 RGP	1 month (review by IDEM)	4 months
IDEM	401 w/more than .1 acre impacts	4 month	7 months
IDEM	401 w/less than .1 acre impacts	1 month	4 months
IDEM	Rule 5	1 month	4 months
IDEM	Isolated Wetlands	4 months	7 months
DNR	All permit types by DNR	6 months	9 months

¹ These time frames are estimates based on average agency review times and they assume an accurately completed application was submitted to the agency. They also assume the agency will have no issues with the permit application. If an agency rejects the application and INDOT is required to re-file the application, the time frames are re-set and begin to run anew when a new application is filed.

2.2 OES Review

All projects forwarded to OES-Waterway Permits Unit are reviewed to determine, based on type and amount of impacts to aquatic resources subject to waterway permits, the level of waterway permitting required. Projects are evaluated based on all applicable permit conditions and requirements including:

- USACE Regional General Permit (RGP)
- USACE 404 Nationwide Permit (NWP)
- USACE, 404 Individual Permits (IP)
- USACE Section 10 Permit
- USACE Levee Permit
- USCG Section 9 Bridge Permit
- EPA Class V Injection Well Permits
- EPA Sole Source Aquifer
- IDEM Section 401 Water Quality Certification (WQC)
- IDEM Rule 5 – Erosion Control
- IDEM Section 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit
- IDEM Isolated Wetland Permit
- IDEM Rule 13 Statewide Permit
- IDNR Construction in a Floodway Permit
- IDNR Navigable Waterways Permit
- IDNR Dewatering Well Installation
- IDNR Water Well Abandonment
- IDNR Lake Preservation Act
- IDNR Lowering of Ten Acre Lakes Act
- County Regulated Drain Permit

After determining the appropriate type of waterway permitting required, OES notifies the district or Central Office Design of the PD. The OES Waterway Permits Unit typically allows three weeks to review a project for a PD; however, PDs are typically performed in less than a week. The PD may be:

- A determination of which waterways permit (or combination of permits) is required.
- A determination that additional information is required to make a PD.

All final PDs are returned to the respective INDOT district or Central Office design.

Processing Fees

INDOT pays no fees for routine permits with the exception by law given for Rule 5 permits. OES administrative assistant fills out the voucher. OES administrative assistant supplies IDEM's Rule 5 section with the Journal Voucher (JV) along with the Notice of Intent (NOI). The JV is then forwarded to IDEM's accounting department for signature. IDEM's accounting

department then sends the voucher back to the OES administrative assistant who stamps the voucher and posts it to the accounting system. Then the OES administrative assistant forwards it to INDOT's accounting section for signature and processing (see Appendix J-4). INDOT accounting then sends to the State Auditor's office to initiate the fee transfer between agencies.

INDOT Publishing Public Notice

Public notices are often required for many permits. Some permit processes require the applicant to publish the public notice, while for others, the permitting agency publishes the public notice. For IDNR and Rule 5, INDOT publishes the public notice for these permits.

Permitting Agencies Publishing Public Notices.

For Section 404 Permits, 401 WQC, Isolated wetlands, Section 9 and Section 10 permits the permitting agencies publish the public notice. Once INDOT has completed and submitted the permit application, then the permitting agency utilizes the information provided to publish a public notice. These agencies will not and can not issue a permit until completion of this public notice process.

2.2.1 Special Provisions Packages

Special Provisions are the methods INDOT uses to attach the waterway permits and their conditions to the project construction plans. The Special Provisions Package (SPP), prepared by OES Waterway Permits Unit, may contain the following:

- All pertinent waterway permits, certifications, and related conditions.
- Drawings and/or mapping submitted with a permit application.
- Specialized plan notes associated with the waterway permits.
- Design Special Provisions pertaining to waterway/wetlands work.

The SPP is returned to the appropriate District or Central Office designer with a SPP title sheet (if applicable). The appropriate INDOT District or Central Office designer is then responsible for attaching the SPP to the construction plans prior to the plan file submittal.

2.3 Design Build Process

Design build projects' permitting process is handled differently than other projects. There are two types of design build projects, each requiring the contractor to take a greater responsibility in the permitting process.

Type 1 design build projects are let with partial plans in which INDOT is able to determine the environmental impacts of the project. The Contractor must finish the development of the plans or hire a design consultant to complete the plan set for INDOT approval. The OES will receive all required permit information from the designer. Unless otherwise determined, OES will be responsible for acquiring the appropriate permits for the project; however, the Rule 5 permit

must be obtained by the Contractor before proceeding with earth disturbing activities. The Contractor will provide to IDEM the information required for its review. During the 28 day review period, the Contractor will submit and obtain the proof of public notice at the Contractor's expense. Once the Contractor receives the Technical Review or waiver of review and proof of publication it sends the complete NOI application packet into the OES for the Waterway Permits Unit Supervisor's signature before completing the NOI submittal process. A copy of the signed NOI document will be placed in the project permit file. The originals are then sent back to the Contractor who then sends the NOI to IDEM with payment of the \$100.00 fee at its own expense.

Type 2 design build projects are let without plans. This is sometimes called '2 Stage Construction'. The Contractor is provided the project parameters by INDOT. In order for this to happen, INDOT must visually assess the impacts that may occur. Secondly, INDOT must be confident that the road portion of the project can be constructed and open to traffic without needing to apply for the permits. This is done by looking at worst case scenarios. Example: A field determination showing a need for a Construction in the Floodway Permit would eliminate this design build process from consideration. The Contractor must design or hire a consultant to design the project that will meet the design parameters given by INDOT. During this process the Contractor is responsible for acquiring the permits needed for the project. The contractor will send to OES the completed permit application(s) for the Waterway Permits Unit Supervisor's signature before submitting the applications to the appropriate agencies. All fees associated with the permitting process, including the public notice and application fees, are the Contractor's responsibility.

3.0 TYPES OF WATERWAY PERMITS

3.1 Introduction to Types of Waterway Permits

Sections 1.2 and 1.3 explain how the various regulatory agencies have the authority, through federal and state regulations, to regulate aquatic resources. In addition, the various aquatic resources which are subject to waterway permitting have been discussed in Section 1.4. Any entity (including private citizens, companies, and federal/state/local agencies) proposing to cause an impact to an aquatic resource subject to permits must obtain the appropriate authorization(s) from the appropriate agency(s). The vehicle for obtaining legal authorization to impact any of the aforementioned aquatic resources is a permit.

Types of waterway permits/submissions required for impacts to aquatic resources can be broken down into the following basic categories:

- USACE Permits – Section 3.2
 - USACE 404 Regional General Permit (RGP) – Section 3.2.1
 - USACE 404 Nationwide Permit (NWP) – Section 3.2.2
 - USACE, 404 Individual Permits (IP) – Section 3.2.3
 - USACE Section 10 Permit– Section 3.2.4
 - USACE Levee Permit – Section 3.2.5
- USCG Permits – Section 3.3
 - USCG Section 9 Bridge Permit – Section 3.3.1
- EPA Permits – Section 3.4
 - EPA Class V Injection Well – Section 3.4.1
 - EPA Sole Source Aquifer – Section 3.4.2
- IDEM Permits – Section 3.5
 - IDEM 401 Water Quality Certification (WQC) – Section 3.5.1
 - IDEM Rule 5 – Erosion Control – Section 3.5.2
 - IDEM 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit – Section 3.5.3
 - IDEM Isolated Wetland Permit – Section 3.5.4
 - IDEM Rule 13 Statewide Permit – Section 3.5.5
- IDNR Permits – Section 3.6
 - IDNR Public Notice – Section 3.6.1
 - IDNR Flood Control Act Permit – Section 3.6.2
 - IDNR Navigable Waterways Act Permit – Section 3.6.3
 - IDNR Dewatering Well Installation – Section 3.6.4
 - IDNR Water Well Abandonment – Section 3.6.5
 - IDNR Lake Preservation Act – Section 3.6.6
 - IDNR Lowering of Ten-Acre Lakes Act – Section 3.6.7
- County Regulated Drain Permits – Section 3.7

IDEM has a website that includes a permit guide. The user may find it of value.
<http://www.in.gov/idem/permits/guide/water/index.html>

The following gives an overview and summary of each of these types of waterway permits.

3.2 – US Army Corps of Engineers

USACE regulates the 404 permitting process through two basic types of permits – individual permits (IP) and general permits. General permits include regional general permits, nationwide permits (NWP), and programmatic permits. General permits may be issued after compliance with other procedures of the regulation.

For Section 404 Permits USACE publishes the public notice. Once INDOT has completed and submitted the permit application, then the permitting agency utilizes the information provided to publish a public notice. These agencies will not issue a permit until completion of this public notice process.

Section 10 of the Rivers and Harbors Act of 1899 requires approval by the United States Army Corps of Engineers (USACE) for any work in or over navigable Waters of the U.S., or which affects the course, location, condition, or capacity of such waters.

For legal levees within the jurisdiction of a local levee authority (e.g., Evansville Levee Authority), the permit application is sent through the permits coordinator to the levee authority. After the levee authority accepts and approves the project's plans, it forwards them to USACE for final approval. USACE's acceptance and approval of a levee permit application is generally assured once the local levee authority approves the plans.

3.2.1 Regional General Permits (RGP)

3.2.1.1 Background

Regional permits are issued by USACE for a general category of activities when the following occurs:

1. the activities are similar in nature and cause minimal environmental impact (both individually and cumulatively), and
2. the regional permit reduces duplication of regulatory control by State and Federal agencies.

On December 15, 2004, USACE Louisville and Detroit Districts reissued a Regional General Permit (RGP) for Indiana (see Appendix C for a copy of USACE RGP as well as IDEM's July 6, 2004 letter of renewal of the WQC). This permit is for those projects that are considered by USACE to have individual and cumulative impacts on Waters of the U.S. of less than 1.0 acre. The RGP authorized activities associated with the construction or installation of new facilities or structures. Generally, any project that impacts greater than 0.1 acre and less than 1.0 acre of wetlands or impacts less than 1.0 acre of Waters of the U.S. below the ordinary high water line may be eligible for this RGP. Minor channel shaping at structure inlets and outlets is not considered channel relocation.

The RGP was effective as of December 15, 2004 and will be in effect for a period of five (5) years. Individual RGP authorizations are valid for three years. The following limitations must be met for the use of the RGP:

1. Discharges of dredged or fill material are limited to less than one (1) acre of Waters of the United States, including wetlands;
2. Dredging in navigable waters is limited to 10,000 cubic yards;
3. Structures and fills for docking and mooring are limited to similar permitted structures and fills in the vicinity;
4. Discharges of dredged or fill material into Lake Michigan are limited to 0.10 acre except for bank stabilization.

Impacts resulting from the relocation, encapsulation, or channelization of greater than 300 linear feet of intermittent or perennial stream; filling greater than 0.10 acre of special aquatic sites; or work causing more than minimal effects will require mitigation to compensate for impacts to the stream, special aquatic sites or wetlands affected. Other work or structures in navigable waters will be evaluated and must include mitigation to reduce impacts to minimum levels. There are twenty-two (22) General Conditions that are a part of the RGP (see Appendix C).

3.2.1.2 Application Process

It is INDOT policy to submit a RGP application form for all projects that appear to qualify for a RGP. INDOT is required to submit either: (1) the IDEM Section 401 WQC RGP Notification Form 51937 (<http://www.in.gov/icpr/webfile/formsdiv/51937.doc>) or (2) the IDEM Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State Form 51821 (<http://www.in.gov/icpr/webfile/formsdiv/51821.pdf>) depending upon the location or the amount of impact. Note that USACE will also accept the regular **Application for Department of Army Permit USACE Form 4345²** (Appendix D-1) as well.

Notification to IDEM is required for all projects. If a project fits the above criteria and if the wetlands or Waters of the United States area being affected is **greater than 0.1 acre and less than 1.0 acre**, **IDEM Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State Form 51821** (Appendix I-2) is used. See Appendix I-3 for guidance in completing the form. If a project fits the above criteria and if the wetlands or Waters of the United States area being affected are **0.1 acre or less**, **IDEM Section 401 WQC RGP Notification Form #51937** (Appendix I-1) is used. Instructions for the completion of this form are attached to the form. These forms will suffice for submittal to USACE as the 404/RGP application and the Preconstruction Notification, to IDEM for the Section 401 Water Quality Certification, and to IDNR as the notice related to 401 and 404/RGP applications. This form does not replace the IDNR Construction in a Floodway Permit application.

Acknowledgment from USACE will be received for the application forms. An acknowledgment from IDEM will be received when Form 51821 is used. No acknowledgment from IDEM is

² IDEM will not accept the USACE Form 4345 in lieu of an IDEM permit application.

anticipated when Form 51937 is used. No response from IDNR is anticipated with respect to 401 or 404/RGP matters for either application form.

The following table summarizes the type of notification/application to be submitted and which agency to submit it to. All impacts discussed are cumulative impacts for the overall project.

Proposed Work			Type of Application or Notification Requirement		Send To	
			<i>IDEM WQC Application Form #51821</i>	<i>IDEM RGP Notification Form #51937</i>	<i>IDEM</i>	<i>USACE</i>
Discharge of dredge or fill materials > 0.1 acre			X		X	X
Discharge of dredge or fill materials <= 0.1 acre	in wetlands			X	X	X
	In other waters	<= 300 linear feet (LF)		X	X	**
		<= 150 LF of REC*	X		X	**
		> 300 LF	X		X	X
Work in navigable waters			X		X	X
Shore alteration projects in Adams, Allen, DeKalb, Elkhart, Jasper, Kosciusko, LaPorte, Lagrange, Lake, Marshall, Newton, Noble, Porter, St. Joseph, Starke, Steuben and Whitley Counties, or on Morse or Geist Reservoirs in Marion and Hamilton Counties				X	X	X

* REC – relocation, encapsulation, channelization of stream.

** Copies of the Application Form are not required to be sent to USACE, but USACE would prefer to see a copy.

1. If the proposed discharge in Indiana waters would impact more than 0.1 acre, up to 1.0 acre, a formal Section 401 WQC application (**IDEM Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State Form 51821**) must be submitted to the IDEM and a copy furnished to USACE. This initiates what is basically a two step process. USACE will send a letter back to the applicant indicating that a WQC is needed from IDEM. Once the WQC is received, and submitted to USACE, then USACE processes the RGP and issues it to the applicant.
2. If the proposed discharge in Indiana waters (Waters of the U.S., including wetlands, special aquatic sites, creeks, ditches, streams, rivers, **deep water** areas, or **open water** areas) would impact 0.1 acre or less, the **IDEM Section 401 WQC RGP Notification Form #51937** must be submitted to IDEM and in some instances,

- USACE. USACE does not require notification where the footprint of the fill is 0.1 acre or less unless the work involves greater than 300 linear feet of stream channel or shoreline (see “3” below) or is located in wetlands, or navigable waters (see “4” below) or the work involves shoreline alteration as specified in “5” below. This is basically a one step process. If a copy of the IDEM Section 401 WQC RGP Notification Form #51937 is copied to USACE, it will issue the RPG.
3. If the proposed discharge in Indiana waters would impact less than or equal to 300 linear feet of stream channel or shoreline (excluding the areas identified in paragraph 5 below and stream relocation, channelization, or encapsulation), the IDEM Section 401 WQC RGP Notification Form #51937 should be completed and submitted. Fill must conform to the existing contour of the shoreline or bank and shall not exceed one cubic yard per linear foot. Fill shall not project into any stream or open body of water. For any project involving bridge construction or maintenance, the limits of bank impact are measured from the centerline of the bridge to a maximum projection of 150 linear feet upstream and downstream; and the activity is part of a single and complete project. If the proposed discharge involves the relocation, channelization, or encapsulation of any length of stream channel, a formal Section 401 WQC application must be submitted to IDEM. If the proposed discharge in Indiana waters would impact more than 300 linear feet of stream channel or shoreline, a formal Section 401 WQC application must be submitted to IDEM and a copy furnished to USACE. All activities that exceed the above impact thresholds require an individual Section 401 WQC from IDEM and are not authorized under this WQC.
 4. If the proposed discharge or if any work would be performed in navigable waters in Indiana (regardless of the acreage or linear foot limitations), a Section 401 WQC application must be submitted to both IDEM and USACE.
 5. If the proposed discharge is for shoreline alteration with the Counties in Indiana listed below (regardless of the acreage or linear foot limitations) the RPG notification form must be submitted to IDEM and USACE. Those Counties are: Adam, Allen, DeKalb, Elkhart, Jasper, Kosciusko, LaPorte, Lagrange, Lake, Marshall, Newton, Noble, Porter, St. Joseph, Starke, Steuben and Whitley Counties. Also, if the proposed discharge is for shoreline alteration on Morse or Geist Reservoirs the RGP Notification form must be submitted to USACE and IDEM regardless of the location, acreage and/pr linear foot limitations.
 6. No stream channel relocation, stream piping, or stream channelization activity is authorized. Channelization includes any activity that alters a stream channel either by dredging, excavating, or bank armoring in order to straighten, deepen, or otherwise alter the flow path and velocity of water traveling within the channel. Stream piping for the purpose of creating crossing(s) is permitted, but may not exceed 150 feet in order to qualify under this condition.
 7. Any activity involving fill that is associated with additional impacts to Waters of the U.S., such as dredging, excavation, damming, or creation of in-channel ponds, is not authorized.
 8. No activity is authorized if it is to be conducted on or in any of the state's waters that have been designated by the Water Pollution Control Board as: [salmonid waters](#) (cold water streams), [Outstanding State and/or National Resource Waters](#), and [Exceptional Use waters](#). Additionally, no activity is authorized if it is to be conducted on or in: (a)

- any wetland adjacent to, or (b) any tributary within a two river mile reach upstream from the outlet to, such designated waters.
9. No activity is authorized where state endangered, threatened, or rare species are documented on a permanent or seasonal basis within a 1/2-mile radius of the proposed project site by the Indiana Natural Heritage Data Center.
 10. No activity is authorized if it will occur in any critical wetland or critical special aquatic site
 11. The IDEM Section 401 WQC RGP Notification Form #51937 shall be completed, signed, and provided to IDEM by the permittee at least 15 working days prior to the proposed water body impact for all activities in which an individual Section 401 WQC is not required
 12. All dredged and excavated material must be disposed of according to the requirements of 329 IAC 10, governing Solid Waste Land Disposal Facilities. All discharges of return water from disposal facilities into waters of the state are subject to NPDES and other water quality requirements set forth in 327 IAC 5 and 327 IAC 2. All permittees must comply with all other applicable provisions of state law, including the provisions of 327 IAC 15-5 and 327 IAC 15-6.
 13. In order to verify that a given project will qualify under the terms and conditions of the certification, IDEM may require additional information from the applicant. If the applicant fails to provide any information requested by IDEM, then the project is not authorized.
 14. IDEM, for any project that qualifies under the terms and conditions of this certification, may choose to require an individual water quality certification if it determines that the project would have more than minimal impacts to water quality, either viewed individually or collectively with other projects that may affect the same water body affected by the proposed project.

Once a RGP is designated or implied, the OES should prepare a memorandum to the INDOT project file stating the following:

Tentatively, this project qualifies for a RGP in that... [each eligibility criterion for the RGP should be listed and the level of adherence to that criterion noted].

3.2.1.3 Submissions

For guidance in completing these forms refer to the following appendices:

- Appendix I-3 for **IDEM Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State Form 51821**
- Appendix I-1 for **IDEM Section 401 WQC RGP Notification Form #51937**
- Appendix D-1 for **Application for Department of Army Permit USACE Form 4345**

In addition, an accompanying 8.5" x 11" copy of the USGS 7.5-min series map should be submitted. Any wetlands mitigation plan package that is developed for the specific project will be required as a supporting document when wetland mitigation is necessary. As noted, this single packet will serve as an application/notice to the Army Corps of Engineers, IDEM, and IDNR, but not as IDNR's Construction in a Floodway Permit application.

Sufficient information must be sent to the address below for review and processing:

Waterway Permits Unit Supervisor
INDOT-OES, 6th Floor
100 N. Senate Avenue
Indianapolis, Indiana 46204

Only one set of permit application information, including any relevant supplemental materials, shall be sent to the above address for review by the OES - Waterway Permits Unit (WPU). Once the permit coordinator assigned to the project has reviewed the application information, any comments or suggested revisions will be forwarded to the appropriate INDOT District/Central Office.

3.2.1.4 Permit Review/Approval

An acknowledgment from IDEM will be received when IDEM Form 51821 is used. No acknowledgment from IDEM is anticipated when IDEM Form 51937 is used. Acknowledgment from USACE will be received in either case.

3.2.2 Section 404 Nationwide Permit (NWP)

3.2.2.1 Background

A nationwide permit is a form of general permit, which authorizes a category of activities throughout the nation. These permits are valid only if the conditions applicable to the permits are met, including those Regional Conditions applied by USACE. If the conditions cannot be met, a regional or individual permit will be required.

NWPs encompass a set of similar activities and project types with limited impacts which qualify for an automatic Section 404 permit, provided that conditions set within the specific nationwide and conditions set by USACE are met. NWPs are designed to expedite processing of projects which, individually and cumulatively, have little or no adverse effect on the environment. The most current NWPs became effective March 18, 2002, and are listed below. However, in Indiana, USACE will issue a Nationwide Permit only under its discretion, in lieu of a Regional General Permit. See section 3.2.1 for details

IDEM has denied Section 401 Water Quality Certification (WQC) for certain NWPs, or applied conditions to certain NWPs, thereby subjecting these activities to Section 401 review. The Louisville and Detroit Districts of USACE have suspended some NWPs, due to the development of the Regional General Permit. The following NWPs are suspended in Indiana:

NWP 07 Outfall Structures
NWP 11 Temporary Recreational Structures
NWP 13 Bank Stabilization
NWP 14 Linear Transportation Projects

NWP 15 U.S. Coast Guard Approved Bridges
NWP 18 Minor Discharges
NWP 19 Minor Dredging
NWP 25 Structural Discharges
NWP 29 Single-family Housing
NWP 36 Boat Ramps
NWP 39 Residential, Commercial and Institutional Development
NWP 40 Agricultural Activities
NWP 41 Reshaping Existing Drainage Ditches
NWP 42 Recreational Facilities
NWP 43 Storm water Management Facilities
NWP 44 Mining Activities

Many activities formally authorized by NWPs are now authorized under the Indiana Regional General Permit. It is INDOT policy to submit a RGP application form for all projects that appear to qualify for a RGP. USACE will inform INDOT of the type of permit to be issued.

If a project qualifies for a NWP, this does not necessarily mean that the project is exempt from Section 401 Water Quality Certification. The Clean Water Act recognizes each state's right to deny certification for any of the NWPs, in recognition of that state's water quality standards, environmental protection goals, and its water resources.

Section 401 Water Quality Certification (WQC). The 401 WQC (described in Section 3.5.1) is IDEM's permit/approval process for issuing certification to impact aquatic resources under Section 401 of the CWA. IDEM issued 401 WQC, with specific 401 conditions, for the current NWPs in July 6, 2004. For those NWPs not requiring a Pre-Construction Notification (PCN), this is essentially a "pre-certification" in a sense, meaning that if you meet all of IDEM's 401 WQC conditions on a particular NWP, you will not have to apply for project specific 401 WQC.

Section 401 Water Quality Certification Decisions for NWPs in effect for the State of Indiana. Following is a list of the 2002 NWPs valid in Indiana and the corresponding Section 401 Water Quality Certification decisions. For each NWP, IDEM has indicated its decision (denial or approval of NWP for Indiana) and if any specific conditions must be satisfied in order for a valid authorization under that NWP to occur.

NWP	Activity	Decision	Conditions
1	Aids to Navigation	Approve	None
2	Structures in Artificial Channels	Approve	None
3	Maintenance	Approve	Yes
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Approve	None
5	Scientific Measurement Devices	Approve	None
6	Survey Activities	Approve	None
8	Oil and Gas Structures	Approve	None
9	Structures in Fleeting and Anchorage Areas	Approve	None
10	Mooring Buoys	Approve	None
12	Utility Line Activities	Approve	Yes
16	Return Water from Upland Contained Disposal Areas	Approve	Yes
17	Hydropower Projects	Deny	N/A
20	Oil Spill Cleanup	Deny	N/A
21	Surface Coal Mining Activities	Approve	None
22	Removal of Vessels	Approve	None
23	Approved Categorical Exclusions	Deny	N/A
24	State Administered Section 404 Program	Approve	None
26	Reserved	N/A	N/A
27	Stream and Wetland Restoration Activities	Approve	Yes
28	Modifications of Existing Marinas	Approve	None
30	Moist Soil Management for Wildlife	Approve	None
31	Maintenance of Existing Flood Control Facilities	Deny	N/A
32	Completed Enforcement Actions	Deny	N/A
33	Temporary Construction, Access, and Dewatering	Approve	None
34	Cranberry Production Activities	Deny	N/A
35	Maintenance Dredging of Existing Basins	Deny	N/A

37	Emergency Watershed Protection and Rehabilitation	Approve	Yes
38	Cleanup of Hazardous and Toxic Waste	Deny	N/A

For INDOT, the use of NWP is very limited because of the suspension by USACE of various NWPs (16 total) in Indiana and IDEM's denial of other NWPs (7 total). Of the remaining, those that INDOT might use the most often include the following:

	NWP	Pre-Construction Notification
3	Maintenance	Notification Required
16	Return Water from Upland Contained Disposal Areas	NONE
33	Temporary Construction, Access, and Dewatering	Notification Required

The following specific conditions apply to the Indiana RGP with IDEM Form 51937 and NWP 3, 12, 27 and 37:

- A. The activity will impact one-tenth (0.1) of an acre or less of Waters of the U.S., including wetlands, special aquatic sites, creeks, ditches, streams, rivers, deep water areas or open water areas; and
- B. The activity will impact 300 linear feet or less of stream channel or shoreline. Fill must conform to existing contour of shoreline or bank and shall not exceed one cubic yard per linear foot. Fill shall not project into any stream or open body of water. For any project involving bridge construction or maintenance, the limits of bank impact are measured from the centerline of the bridge to a maximum projection of 150 linear feet upstream and downstream; and
- C. The activity is part of a single and complete project.

All conditions of a particular permit, including general, specific, regional and IDEM 401 WQC conditions must be adhered to for that permit to be valid. Activities that exceed the above impact thresholds require submission of an IDEM Form 51821.

3.2.2.2 Application Process.

USACE will occasionally issue a NWP, but only under its discretion, in lieu of a Regional General Permit. The permit applicant should not propose an application specifically for a NWP.

Utilize the same application process and forms as described in Section 3.2.1.2 in the RGP Application Process.

3.2.2.3 Submissions

For guidance in completing the following forms, see Appendix I-3 for **IDEM Form 51821**, Appendix I-1 for **IDEM Form 51937**, and Appendix D-1 for **USACE Form 4345**. For NWP 33 (Temporary Construction, Access and Dewatering) a restoration plan is required. (For example,

“Once construction is completed, the temporary work pad will be removed and the stream will be restored to its preconstruction contour.”)

Instructions for preparing a Pre-Construction Notification (PCN). The preparation of a PCN is basically the same as the preparation of an 404 IP; therefore, see Appendix D-2 for instructions. The only application form difference between the 404 NWP and 404 IP is that an Individual 404 is combined with a 401 WQC application and submitted concurrently. USACE will accept **IDEM Form 51821** in lieu of its **USACE Form 4345**. However, there are differences in the process for a 404 Individual Permit and a PCN for a NWP. See Section 3.2.3 for detailed information regarding background, overview, and processing of a 404 Individual Permit application.

3.2.2.4 Permit Review/Approval

USACE is bound by rules to make a permit determination on a PCN within 45 days of receipt of the PCN, provided it has received a complete application. In addition, USACE has 30 days to notify the applicant if its PCN is complete. Should the applicant submit a complete application and not receive a determination from USACE, then authorization under the requested NWP(s) can be assumed by the applicant. This situation does not happen often and INDOT will consult with the appropriate USACE district office prior to assuming authorization on any project without a formal USACE permit determination.

Should USACE determine that the project will qualify for a NWP, then it will indicate what additional information, if any, is needed. If USACE elects to authorize the project under a NWP, an official letter is sent by USACE stating which NWP(s) it has authorized the project under as well as any special conditions. In addition, USACE will attach a copy of the permit with all of its conditions and a **Post-Construction Compliance Certification Form**. The Post-Construction Compliance Certification Form must be signed and returned to USACE following the completion of the authorized activity, essentially stating that the work is complete and was done as designed and in accordance with the permit conditions. For INDOT projects, the project construction engineer/supervisor is responsible for signing the compliance certification form and returning it to the appropriate USACE district office. A copy of this completed form should also be forwarded to OES-Waterway Permits Unit.

Typically, NWPs authorized through the PCN process by USACE are valid for two years. However, if an expiration date is not specifically stated in the authorization letter, then the NWP may be valid until March 19, 2007 (expiration date of current NWPs). As long as the work is started (by definition this means under contract) before the expiration date (whether expiration date is specifically stated or assumed), the project is considered authorized. Projects authorized by NWP, which have begun construction and are not completed prior to the March 19, 2007 expiration date, must be completed within twelve months after the expiration date (March 19, 2008). Any NWP with a specific expiration date must be completed by the expiration date stated in the authorization letter. The applicant must request, in writing to USACE, an extension of the permit if it is apparent that the activity will not be completed within the specified time frame.

3.2.3 USACE, 404 Individual Permit (IP)

3.2.3.1 Background

Individual Section 404 Department of the Army Permit Applications are required for all projects that do not qualify for a Regional General or Nationwide Permit. Individual 404 Permits are intended to authorize projects that have more than a minimal adverse effect on the aquatic environment. Where 1.0 acre or more of jurisdictional wetlands or Waters of the United States are impacted, an Individual Permit is required. If the area of wetlands impacted is greater than 0.1 acre but less than 1.0 acre, the project will generally qualify for a Regional General Permit (see Section 3.2.1.1).

3.2.3.2 Application Process

Individual Permit application forms must be filed with USACE for impacts of 1.0 acre or more. A 404 Individual Permit application is essentially the standard Application for Department of Army Permit Form, **USACE Form 4345**. USACE will accept either Application for Department of Army Permit USACE Form 4345 or IDEM Form 51821 for an 404 Individual Permit/401 WQC application. Should a combined 404/401 application be completed, as described in the paragraph below, the additional detail will likely be covered within the 401 WQC application discussion and will not require duplication. The 404 application must provide sufficient information for USACE to complete a 404(b)(1) evaluation. This section describes, in detail, guidance on completing the 404 permit application.

For instructions on completing the **USACE Form 4345** follow the instructions in Appendix D-1. The only difference between the 404 NWP and 404 IP is the fact that an Individual 404 is combined with a 401 WQC application and is submitted concurrently. However, there are differences in the process for a 404 Individual Permit and a PCN for a NWP.

In most cases, when a project requires a 404 IP, it will also require a 401 WQC by IDEM. If this is the case, a combined 404/401 application will be submitted concurrently to both USACE and IDEM. The combined application approach develops a “parallel review” for the agencies and essentially speeds up the permitting process. In addition, the combined application with concurrent submission allows USACE to review the 401 WQC application, which has much greater detail regarding alternatives analyses and compensatory mitigation for impacts to aquatic resources, and aid it in its decision making process. In most cases, if the discussion of alternatives, impact avoidance/minimization, and mitigation is acceptable to IDEM, it will be acceptable to USACE.

See Appendix I-2 for the IDEM Form 51821, also known as the combined 404/401 application.

3.2.3.3 Submissions

404 IPs are issued through the appropriate USACE district office. USACE processing of 404 IPs involves the evaluation of individual, project specific application, which can be conducted in three steps: pre-application coordination, formal project review, and decision making.

Pre-application coordination involves the submission of applicable environmental information for review and comment by USACE. In addition, a field meeting may occur to evaluate the project and its impacts and make jurisdictional determination on streams and/or wetlands.

On major road projects that are expected to require individual Section 404 Permits, the USACE has deemed it necessary to include a sketch showing the plan view and a longitudinal cross section of each culvert of approximately 36 inches in diameter or greater appearing in naturally occurring waterways. An overall project map shall be included with the permit application to show the location of each such culvert and the locations of the wetland impacts throughout the project. In this case, the USACE interprets the definition of Waters of the U.S. to include all naturally occurring draws.

The permit application should include the quantities of the various fill materials segregated to show both the total cubic yards and the cubic yards placed below the ordinary high water elevation. The total area in square yards of the fill material placed below ordinary high water shall also be provided. The wetlands mitigation plans submitted with a permit shall include a wetland delineation report and a wetlands monitoring plan.

The designer must review constructability issues at project sites where work causeways and cofferdams will be required. Construction activities such as bridge pier construction, sewer outfalls in rivers and earth hauling across streams may all require temporary filling of the Waters of the U.S. The designer must submit detailed sketches of temporary causeways, etc., which must be included with applications. The designer should think through the project construction sequence, so that all construction activities which impact the Waters of the U.S. will be included in the permit application.

Projects that have both road construction and bridge construction should have one combined USACE Permit application. Multiple projects in the same contiguous section of roadway will also usually be submitted in one combined application.

Completing Application Form The following discussion is intended to be guidance on how to properly fill out the standard USACE Individual Permit (Pre-Construction Notification for Nationwide Permits) Application for Department of Army Permit USACE Form 4345. This same application form is used for NWPs, Individual Permits (IPs), RGPs and Section 10 Permits. A checklist for materials to be included with a PCN is included in Appendix D-2. A blank permit application may be found in Appendix D-1. Information needed to complete USACE applications shall be sent to the following address:

Waterway Permits Unit Supervisor
INDOT-OES, 6th Floor
100 N. Senate Avenue
Indianapolis, Indiana 46204

Once the project has been reviewed, and the application completed, any comments or requests for additional information will be forwarded to the appropriate INDOT District Coordinator or design consultant.

The following items (as required) will need to be included with the submittal and are required by USACE:

- Photographs of aquatic resources to be impacted and associated structures, such as bridges. These photographs should be keyed to a photo log/location sheet, for a clearer understanding of which picture corresponds to which resource.
- Ecological Survey Report, if available. If not, individual data forms may be included (i.e., QHEI, HHEI, Wetland Delineation Report, etc.)
- Projects involving stream impacts should include relevant function and value assessments, such as QHEI/HHEI scoring forms, (2 copies).
- Projects involving wetland impacts should include all the information required by the *Ecological Manual* (to be prepared soon).
- Copies of any clearances, permits, relevant agency coordination, approvals that may have been listed in Block 25. This could include: ecological coordination (USFWS, IDEM, IDNR), FEMA coordination, SHPO, Cultural Resources coordination, etc. See Section 1.6 for further information.

3.2.3.4 Permit Review/Approval

Formal project review begins once an application is received by USACE. USACE will prepare and issue a 30 day public notice to all known interested persons, evaluate the impacts of the project and all comments received, negotiate necessary modifications of the project if required, and draft the appropriate documentation for a permit decision. The permit decision includes a discussion of the environmental impacts of the project, the findings of the public interest review process, and any special evaluation required.

USACE permit decision considers the public's interest in the project when making a permit decision. USACE will typically ask INDOT to assist in addressing any public comments or concerns. In some cases, USACE might hold a public hearing if substantial comments are received and comments cannot be resolved informally. In most cases, a permit will be granted unless the project is found to be contrary to the public interest and/or if sufficient mitigation is not provided by the applicant.

There are a few things to consider while the concurrent 404/401 review is taking place. IDEM cannot formally act on the 401 WQC applications until USACE 404 public notice is issued. Thus, if there are issues with the 404 application, it is in the applicant's best interest to address those concerns with USACE, so the public notice/hearing process is not delayed. Additionally, USACE cannot issue the final 404 IP until IDEM approves the 401 WQC. So in some cases, USACE may be ready to approve the 404 IP, but cannot because IDEM has not approved the 401 WQC. Thus the delay in the 401 WQC approvals will inadvertently delay the 404 IP.

Assuming USACE approves the project and its 404 application, an invalidated (provisional) 404 permit will be issued to the applicant. The invalidated 404 permit will have the terms and conditions of the permit and requires the applicant to agree to the terms and conditions by signature. The invalidated permit is returned to USACE for the Commander's signature and final validation of the permit. The final validated 404 IP is then sent to the applicant. OES-Waterway Permits Unit staff will then submit the final validated 404 IP for inclusion into the construction contract book.

USACE processing time, following the receipt of a complete application package, typically is approximately 180 days, which includes a 30 day public notice time period. However, as noted above, issuance of the 404 permit is dependent on the 401 WQC.

A proof of permit sign, which is to be displayed publicly on the project site, shall be sent to the designer with its copy of the permit package. It is the responsibility of the designer to deliver that sign to construction project engineer/supervisor during the preconstruction conference or make other arrangements for its delivery. The sign may be only for the 404 permit.

3.2.4 USACE Section 10 of the Rivers and Harbors Act of 1899

3.2.4.1 Background

This law authorizes the USACE to regulate certain structures or work in or affecting navigable waters of the U.S. Typical activities requiring Section 10 permits are: the construction of piers, wharves, bulkheads, marinas, ramps, float intake structures, cable or pipeline crossings and dredging and/or excavation.

For Section 10 permits the USACE publishes the public notice. Once INDOT has completed and submitted the permit application, then the permitting agency utilizes the information provided to publish a 30-day public notice. USACE will not issue a permit until completion of this public notice process.

3.2.4.2 Application Process

Section 10 permits are managed by the same USACE districts as the 404 permits (see Section 1.3 for a map of USACE Districts in Indiana). Permits for Section 10 and Section 404 are typically handled jointly. The approval process for work in a Section 10 water is the same as the Pre-Construction Notification (PCN) process described in Section 3.2.3.3. In Indiana, any work proposed in Section 10 water requires a PCN. A listing of Section 10 waters for Indiana is included in Appendix E. USACE coordinates Section 10 permits with the USCG, which issues a notice to navigation.

The application form for a Section 10 Permit is the same form (Application for Department of Army Permit USACE Form 4345) used for an Individual Section 404 Permit described in Sections 1.3 and 3.2.3. Follow those sections for instructions on completing the application form.

3.2.5 USACE Levee Permit

3.2.5.1 Background

Generally, for legal levees within the jurisdiction of a local levee authority (e.g., Evansville Levee Authority), the permit application plus a set of plans and appropriate specifications are sent through the permit coordinator to the levee authority. **The permit form should be obtained from the local levee authority prior to application submittal.** The levee authority may suggest or require changes to the project's plans. These changes must be evaluated and coordinated on a case-by-case basis. After the levee authority accepts and approves the project's plans, it forwards them to USACE for final approval. USACE's acceptance and approval of a levee permit application is generally assured once the local levee authority approves the plans. A formal approval document is then received from the local levee authority and USACE. It is very rare that USACE will not accept a set of plans already approved by a local levee authority. However, the designer must account for that possibility when determining the time for permit application submittals.

For legal levees that exist outside of the jurisdiction of a levee authority, the permit application plus a set of plans and appropriate specifications is sent by the permits coordinator directly to USACE. USACE may suggest or require changes to the project's plans. These changes must be evaluated and coordinated on a case-by-case basis. USACE will ultimately accept and approve the project's plans, and it will send a notice to INDOT once final approval is granted.

Numerous embankments that serve as unofficial levees have been constructed and are not part of USACE levee system or some other levee authority's levee system. Although the designer may need to alter these embankments to achieve an effective design, coordination should be completed before breaking the embankment's integrity. The designer should check with the local drainage authority and USACE to ensure that the embankment is not part of either of those parties' flood control systems. The designer should check with the Production Division, Hydraulics Unit and Real Estate to determine the effects of breaking the embankment on adjacent lands. Only after these types of issues have been investigated, should the designer, if necessary, propose a cut into an apparent flood control embankment that is not part of a legal, flood control, levee system.

3.3 USCG Permit

3.3.1 USCG Section 9 Bridge Permit

A United States Coast Guard (USCG) Section 9 Bridge Permit is required to construct a new bridge or causeway or to modify an existing bridge or causeway across commercially navigable U.S. water.

3.3.1.1 Background

The USCG evaluates the bridge permit applications to ensure the project meets horizontal and vertical clearances required for navigation. The USCG is also required by law to ensure that all

environmental considerations are given careful attention and importance in each bridge permitting decision. Therefore, the National Environmental Policy Act (NEPA) document (Categorical Exclusion, Environmental Assessment/Finding of No Significant Impact, or Environmental Impact Statement), the 401 Water Quality Certification (WQC) and the 404 Waterway Permit must be completed/authorized and submitted to the USCG. In some cases (e.g., Ohio River Bridges), a 401 WQC must be obtained both from Indiana and the adjacent state.

Most of Indiana lies within the 8th Coast Guard District with permits issued from the Commander's Office in St. Louis, Missouri. The northern portion of Indiana above the 41st Parallel is under the jurisdiction of the 9th Coast Guard District headquartered in Cleveland, Ohio (see Section 1.3 for a map of Coast Guard Districts in Indiana).

For Section 9 permits the USCG publishes the public notice. Once INDOT has completed and submitted the permit application, then the USCG utilizes the information provided to publish a public notice. USCG will not issue a permit until completion of this public notice process.

3.3.1.2 Application Process

In order to streamline USCG review and authorization of the Section 9 Bridge Permit, it is necessary to have the NEPA document, the 401 WQC(s), and the 404 Permit completed and authorized prior to submission of the Section 9 Bridge Permit. A USCG Bridge Permit Application Guide including the application guide and an explanation of how to complete Section 9 Bridge Permit process can be found at the following website:

http://www.uscg.mil/d11/OAN/BRIDGE/BPAG_699.pdf.

3.4 EPA Permits

EPA is the agency responsible for Class V injection well documentation. Under existing federal regulations, Class V injection wells (which are mostly shallow underground disposal systems) are “authorized by rule” (40 CFR 144). This means that Class V injection wells do not require a permit if they do not endanger underground sources of drinking water and they comply with other Underground Injection Control (UIC) program requirements.

Federally-funded projects which have the potential to contaminate a designated sole source aquifer are subject to EPA review. Proposed projects that are funded entirely by state, local, or private concerns are not subject to EPA review, however, if the proposed project may result in the contamination of underground sources of drinking water through any injection wells, the EPA may require those injection wells to either be closed or obtain permits.

3.4.1 EPA Class V Injection Wells

3.4.1.1 Background

The UIC program requirements include the following:

- 1) Submitting basic information about impacted Class V injection wells to EPA or the state primacy agency, and
- 2) Constructing, operating, and closing Class V injection wells in a manner which protects underground sources of drinking water.

Class V wells include all other injection wells. They generally are shallow subsurface fluid disposal systems which are disposing of non-hazardous fluids into or above underground sources of drinking water. There are many types of Class V wells - see Appendix G-7 for a listing of subclasses of Class V wells: [List of Types of Class V Wells](#).

EPA implements the UIC Class V well program in Indiana. EPA may ask for additional information or require a permit in order to ensure that ground water quality is adequately protected. Contact information for Class V injection wells is as follows:

UIC Branch Chief, EPA R5

Phone: (312) 886-1492

Mailing Address:

77 West Jackson Blvd.

Chicago, IL 60604-3590

Website: <http://www.epa.gov/region5/water/uic/uic.htm>

3.4.1.2 EPA Requirements for Class V Injection Wells

If impacting a Class V well, INDOT is required to do the following during NEPA:

- 1) provide EPA with some basic inventory information about the well, and

- 2) not endanger any underground source of drinking water.

3.4.1.3 Submissions

To provide the required inventory information, INDOT should send EPA a completed Underground Discharge System (Class V) Inventory Sheet (see Appendix G-1). For most incidents submission of an Inventory Sheet is all INDOT will have to do (if the information provided is complete). In rare situations, if EPA needs additional information, or if INDOT would need to do anything else (like submit a permit application – see Appendix G-2, **Underground Injection Control Permit Application**) or close INDOT's Class V well, EPA will inform INDOT. INDOT is not allowed to contaminate an underground source of drinking water, so the project must be designed to prevent any discharges of contamination-causing fluids. Should INDOT need to close a Class V injection well, then submit a **Class V Well Pre-Closure Notification Form** (Appendix G-3). A copy of the EPA instructions (**Region 5 Underground Injection Control Class V Permit Application Instructions**) for completing the **Underground Injection Control Permit Application** is located in Appendix G-4. In the event additional forms are required by the EPA, they can be found at the following web address: <http://www.epa.gov/region5/water/uic/forms.htm#classv>. For further information concerning Class V injection wells, refer to Appendix G-5 (Frequently Asked Questions about UIC Class V Wells).

3.4.2 EPA Sole Source Aquifer

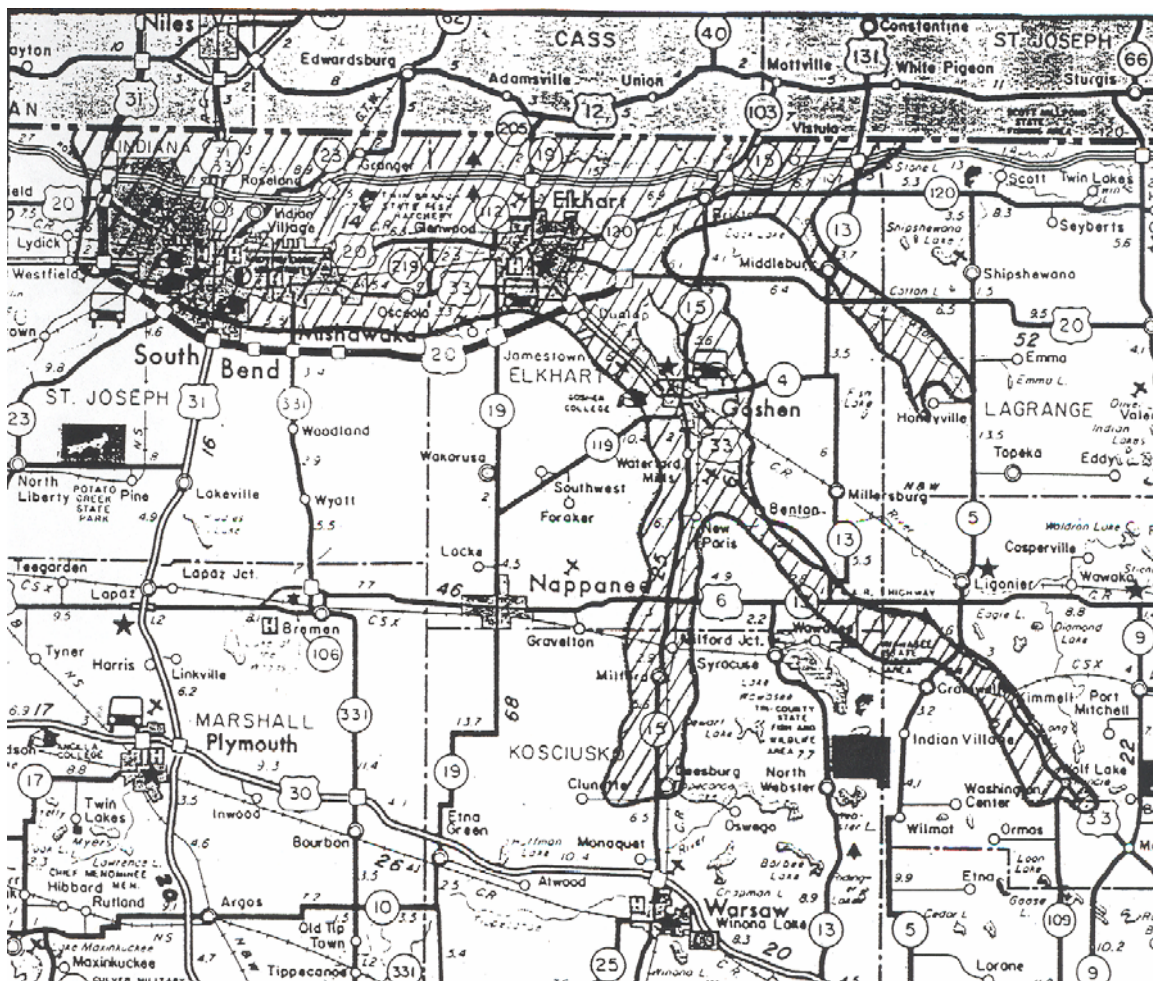
3.4.2.1 Background

EPA developed a Memorandum of Understanding (MOU) with FHWA that established review responsibilities and project categories requiring EPA review for projects impacting a sole source aquifer (see Appendix G-6). This MOU states that FHWA will not commit federal moneys to any project EPA determines may contaminate a sole source aquifer, creating a significant hazard to public health. The requirements of this agreement apply to any federally funded highway project that is wholly or partially within a sole source aquifer and to which one or more of the following criteria apply:

- (1) Construct additional through lanes/interchanges, on existing roadways.
- (2) Construct of a two or more lane highway on new alignment.
- (3) Construct rest area/scenic overlooks with on site sewerage disposal facilities.
- (4) Any project involving a new or existing well (See Section 1.3 EPA Class V Injection Wells) within a designated sole source aquifer area.
- (5) Any other project that FHWA, in consultation with EPA, believes may have a potential to affect the designated aquifer through its recharge zone so as to create a significant hazard to public health.

3.4.2.2 Process

When a project occurs in a sole source aquifer and meets any of the above criteria, INDOT must assure EPA that the project will not contaminate the aquifer. A *Sole Source Aquifer Screening* may be all that EPA requires to prove that a project does not have the potential to adversely affect a sole source aquifer. EPA must approve a *Detailed Ground Water Impact Assessment* when it determines that the project has the potential to adversely affect the quality of the groundwater. This usually occurs during the National Environmental Policy Act (NEPA) phase of project development. EPA may apply conditions to such projects to assure that no contamination of the sole source aquifer occurs. These conditions must be met and included in the construction contract book.



Sole Source Aquifer Boundaries
St. Joseph Aquifer

3.5 IDEM Permits

EPA authorizes IDEM and USACE to administrate and grant permit approvals for projects which impact non-isolated aquatic resources (Waters of the State) through the 401 Water Quality Certification (WQC) process.

A Rule 5 Submission is required for construction activities where the area of grading, excavation, or other land disturbance impacts 1 acre or more of land area. Any earth exposed counts toward the 1 acre. Rule 5 applies to all State and local projects regardless of community size or funding type.

A NPDES - Point Source Rule 402 Permit is required for all point-source discharges (other than those addressed by the Section 404 Permit and/or a Rule 5 submission) into the Waters of the U.S. (e.g., sewage treatment plants at rest areas) where an outlet pipe for other than storm water is required. An Individual Permit will be required where the discharge points are into waters categorized as exceptional use.

Isolated wetlands (wetlands which are not subject to USACE jurisdiction) are regulated by the IDEM under the isolated wetland statute and rules.

Rule 13 Statewide permits regulate storm water discharges. Departments of Transportation must also comply with these regulations. These entail INDOT undertaking measures to maintain or improve the quality of water leaving our facilities and conveyances.

3.5.1 IDEM Section 401 Water Quality Certification (WQC)

3.5.1.1 Background

Any project requiring a 404 permit from USACE, also requires a 401 WQC from IDEM's Office of Water Quality. The 401 WQC can come in two forms. For those NWP's not requiring a Pre-Construction Notification (PCN), you will not have to apply for project specific 401 WQC as long as all of the 401 conditions on the NWP's are met.

The second means for obtaining a 401 WQC is a project specific 401 WQC. Depending upon the impacts to waters of the state, INDOT will submit either the **IDEM Section 401 WQC RGP Notification Form #51937** (for impacts less than 0.1 acre and no impacts to isolated wetlands) or the **IDEM Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State Form 51821** (for impacts greater than 0.1 acre, significant impacts to Class I & II isolated wetlands, or any impact to a Class III isolated wetland).

Note that if a project requires an individual 404 and 401, a combined application is typically submitted to both USACE and IDEM for a concurrent review. **IDEM Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State Form 51821** requires information concerning other state and federal permits, basic

project information, project description, project purpose, as well as an alternatives discussion to meet requirements of IDEM's Anti-Degradation Rule.

3.5.1.2 Application Process

Blank permit applications may be found in Appendix I-1 and I-2. Instructions can be found in Appendix I-3. IDEM's web sites listed below contain sample 401 WQC applications and other useful information:

<http://www.in.gov/icpr/webfile/formsdiv/51937.doc>- **IDEM Section 401 WQC RGP Notification Form #51937.**

<http://www.in.gov/icpr/webfile/formsdiv/51821.pdf>- **IDEM Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State Form 51821.**

The designer shall provide information to complete the applications. If the application lacks information necessary to demonstrate the criteria set forth by authorized agency, IDEM will inform INDOT of the additional information that must be submitted.

3.5.1.3 Submissions

The application for a 401 WQC shall be submitted concurrently with a 404 application as one combined document (unless otherwise specified, or unless a NWP has been obtained). Submit 404/401 application information, including the location of the project (preferably on a USGS quadrangle) and 8-1/2x11" scaled plan drawings; and one (1) set of original scaled plan drawings (or good reproducible copies) shall be sent to the address below for review by the OES Waterway Permits Unit (WPU).

Waterway Permits Unit Supervisor
INDOT-OES, 6th Floor
100 N. Senate Avenue
Indianapolis, Indiana 46204

Any comments or requests for additional information will be returned to INDOT. IDEM requires minimization of environmental impacts to surface water quality and still meet the project goals. The mitigation plan should demonstrate measures taken for avoiding or minimizing impacts to streams and/or wetlands. Typical conditions that IDEM may require include the following:

- Establishment of buffer zones around water bodies,
- Prohibitions on work during certain time periods,
- Storm water and erosion control measures,
- Conservation easements,
- Monitoring or water quality studies.

INDOT must address avoidance and minimization of impacts to aquatic resources (streams and/or wetlands). When an aquatic resource must be impacted, INDOT will prepare a mitigation plan. The plan should include the following information:

- project description,
- biological and physical impacts,
- project costs,
- sewage projects and other related projects,
- water pollution controls,
- human health impacts,
- jobs and revenue gained/lost,
- environmental benefits gained/lost, and
- mitigation techniques.

For Section 401 WQC, IDEM publishes the public notice. Once INDOT has completed and submitted the permit application, then IDEM utilizes the information provided to publish a public notice. IDEM will not issue a permit until completion of this public notice process. The 401 WQC process involves, at a minimum, a 30 day public notice that can only take place following USACE 404 public notice, unless the project has received a NWP. IDEM may hold a public hearing (either at the applicants request, a citizens request, or because the project has triggered an automatic public hearing requirement) which requires a 45 day public notice. When IDEM issues the 401 WQC, specific terms and conditions will be outlined.

3.5.1.4 Permit Review/Approval

IDEM Section 401 WQC RGP Notification Form #51937 requires action to be taken by IDEM within 30 days. If at the end of the thirty days IDEM fails to respond then work can begin on the construction project stated on the application. If after the thirty day time period IDEM acts to deny the request for the permit, INDOT must resolve the permit differences between the agencies.

Following issuance of the 401 WQC, USACE will issue the 404 Individual Permit. The OES will receive by mail the 404/401 permits from USACE and IDEM. Copies of both permit packets will be sent to the district construction, project manager, and designer with the originals held by the OES in its project file. As with all other permits, the designer shall include the 404 permit and 401 WQC with the construction plans to be included in the bid proposal books. The average application time required from submission of the 401 WQC to the issuance of a 401 WQC is approximately four months. For a project that requires both an individual 404 permit and an individual 401 WQC, the entire process typically averages approximately twelve months. If IDEM fails to act within one year of receiving an application, the WQC requirements are deemed waived.

3.5.2 IDEM Rule 5 – Erosion Control (IC 13-1-3-4, IC 13-1-3-7, IC 13-7-7, IC 13-7-10-1; and 327 IAC 15-5-1)

3.5.2.1 Background

Rule 5 (327 IAC 15-5). The requirements of Rule 5 apply to construction activity (which includes clearing, grading, excavation and other land disturbing activities) that results in the disturbance of **one (1) acre** or more of total land area. If the land disturbing activity results in the disturbance of less than 1 acre of total land area, but is part of a larger project whose total land area of disturbance is greater than one acre, it is still subject to Rule 5 permitting. Since the NPDES general permit for storm water runoff associated with construction activity is a permit-by-rule, no actual permit is issued. The applicant receives either a Notice of Sufficiency or a Notice of Deficiency. If you receive a Notice of Deficiency, an amended Notice of Intent (NOI) must be submitted to IDEM before the initiation of land disturbing activities.

A Rule 5 Submission is required for construction activities where the area of grading, excavation, or other land disturbance impacts 1 acre or more of land area. Any earth exposed counts toward the 1 acre. Rule 5 applies to all State and local projects regardless of community size or funding type.

3.5.2 IDEM Rule 5 – Erosion Storm Water Runoff Associated with Construction Activity (IC 13-1-3-4, IC 13-1-3-7, IC 13-7-7, IC 13-7-10-1; and 327 IAC 15-5-1)

3.5.2.1 Background

A Rule 5 Submission is required for construction activities where the area of grading, excavation, or other land disturbance impacts 1.0 acre or more of land area. Any earth exposed counts toward the 1 acre. Rule 5 applies to all projects regardless of community size or funding type. The submittal of a Construction plan, including a Storm Water Pollution Prevention Plan are required to comply with 327 IAC 15-5 (Rule 5). INDOT *Standard Specifications* and *Standard Drawings* have been developed for erosion and sediment control to formalize and expand on existing measures available to the designer. These guidelines will aid the designer in choosing the appropriate measures and frequency of their use. Although Rule 5 requires erosion and sediment control measures for 1.0 acre or more, these measures should be applied to all projects wherever land is disturbed. Formal submittal to comply with Rule 5 is not required where less than 1.0 acre is disturbed. However, where soil is disturbed, a Storm Water Pollution Prevention Plan must be developed. The goal of the Storm Water Pollution Prevention Plan is to minimize the amount of sediment generated by construction operations leaving the construction site. In addition, to sediment, a Storm Water Pollution Prevention Plan should address other types of pollutants that are associated with the construction activities.

Transition Indiana Department of Environmental Management (IDEM) is the responsible agency for Rule 5 compliance. IDEM, Division of Soil Conservation -and the Soil and Water Conservation Districts (SWCDs) have cooperated on program implementation since 1992. The Division of Soil Conservation is no longer participating in the regulatory processes related to Rule 5. IDEM is currently working with the local SWCDs to transition all activities related to Rule 5 to IDEM.

Please be advised that the information below is only for the transition period. IDEM is assessing its resources and will develop a revised implementation process. During this transition, INDOT is submitting all plans to IDEM. IDEM will respond within 28 days with a technical review form letter or a waiver (“no review” meaning that the plans will not be reviewed at submission but may be reviewed at a future date).

As IDEM develops its revised implementation process for Rule 5, IDEM will evaluate how to best allocate resources to accomplish necessary onsite inspections.

3.5.2.2 Application Process

Pursuant to 327 IAC 15-4-3(g), a Rule 5 NOI and NOT can only be signed by the Commissioner of INDOT or his duly authorized representative(s). The only duly authorized representatives are the Administrator of the Ecology and Waterways Permitting Section of the Office of Environmental Services and/or the Supervisor of the Waterways Permitting Unit of the Office of Environmental Services.

See Appendix J-2 for information on data required for a Rule 5 Submission. Go to the attached website for a list all applicable IDEM forms –

<http://www.in.gov/icpr/webfile/formsdiv/idem.html>. For Rule 5 use **Form #47487**, entitled **Notice Of Intent (NOI) Storm Water Runoff Associated With Construction Activity**. See Appendix J-6 for the Rule 5 Application Checklist.

INDOT must publish the Rule 5 public notice. The Rule 5 public notice (see Appendix J-1) must be published in a local newspaper (use the current media guide to determine the appropriate local newspaper with the largest circulation) within the project area. This must be done concurrent with the first submission of the complete set of construction plans and the first page of the Notice of Intent to IDEM (or other appropriate agency). Within 28 days, INDOT will receive from IDEM (or other appropriate agency) either a technical review form or a waiver of review. If INDOT receives a technical review form, then INDOT submits the entire Notice of Intent to IDEM with a proof of public notice (the original advertisement with the notarized proof of publication). A waiver of review letter authorizes INDOT to proceed with application process. The plan could still be subject to review at a later date.

A second proof of public notice (the original advertisement with the notarized proof of publication) must be forwarded to the INDOT Division Administrator for payment.

Note for future projects, Rule 5 requirements may change to include information on outstanding State Resources and scenic waters:

The following information is not currently needed in Rule 5 permitting, but may be needed in the future. First, determine if a body of water is designated as outstanding State Resource or designated as exceptional use. If the project’s affected water is one of these locations, a list of names and addresses of the affected property owners with the Storm Water Prevention Plan

should be submitted to OES. OES will then request an individual NPDES Construction Permit. Construction affects on all other waters will not require an individual Permit.

The primary difference between the procedure for which an Individual Permit is or is not required is timing. If an Individual Permit is not required, once OES submits the Notice of Intent to IDEM, the process ends. If an Individual Permit is required, IDEM issues a public notice for 30-day comment. The timeframe from IDEM's receipt of the NOI/request for an Individual Permit until the end of the process can be 120 days.

3.5.2.3 Submissions

Processing Fees. INDOT pays no fees for routine permits with the exception by law given for Rule 5 permits. OES administrative assistant fills out the voucher. OES administrative assistant supplies IDEM's Rule 5 section with the Journal Voucher (JV) along with the Notice of Intent (NOI). The JV is then forwarded to IDEM's accounting department for signature. IDEM's accounting department then sends the voucher back to the OES administrative assistant who stamps the voucher and posts it to the accounting system. Then the OES administrative assistant forwards it to INDOT's accounting section for signature and processing (see Appendix J-4). INDOT accounting then sends to the State Auditor's office to initiate the fee transfer between agencies.

Processing Fees. INDOT pays a fee for Rule 5 processing. INDOT pays no fees for other routine permits. Currently INDOT supplies IDEM with a "billing process sticker" placed on the Notice of Intent that is forwarded to IDEM (see Appendix J-4). The "billing process sticker" informs IDEM to prepare a voucher to INDOT to initiate the transfer of the fee between agencies.

The **Site Analysis** will result in the development of a Storm Water Pollution Prevention Plan. This plan should identify control measures that will be used to minimize erosion and off-site sedimentation. See Chapter 37-2.0 to 37-3.05 of the Design Manual for details concerning specific erosion and sediment control measures. When preparing the Storm Water Pollution Prevention Plan, the designer should start by looking at local drainage patterns and topography. Volumes of water entering and leaving the construction site at various locations should be taken into consideration. Where reasonable, off-site waters should be isolated and allowed to pass through the project site. Sediments from on-site sources should be captured prior to leaving the site. The method of treatment depends upon the drainage area and local topographic features associated with the project site.

Providing a vegetated ground cover is the most important factor in terms of preventing erosion. If the existing vegetation is to be disturbed, appropriate erosion and sediment control measures should be utilized. If utility features traverse the site, their relocation should be taken into consideration when designing these measures.

The construction clear zone should be determined in order to select the appropriate erosion and sediment control measures. Chapter Eighty-two of the Design Manual contains the information necessary to determine the construction clear zone.

Submittal of Rule 5 Documentation. The OES-WPU is the responsible INDOT contact for Rule 5 submissions. The designer is responsible for submitting to OES the necessary information

to complete the application forms, such as required half-sized plan sheets including the title sheet showing the project location, etc. The Storm Water Pollution Prevention Plan should include a legend of standard practices with a different color highlighting each practice. The designer should color or highlight the plans to indicate where each practice will be applied. The work type should be clearly described on the title sheet. Half-size Storm Water Pollution Prevention Plans should be prepared by the designer and submitted to OES. During the first plan submittal, the OES will submit the Storm Water Pollution Prevention Plan and the first page of a Notice of Intent letter with IDEM.

A Rule 5 public notice (see Appendix J-1) is published in a local newspaper concurrent with this submission. Within 28 days, INDOT will receive from IDEM (or other appropriate agency) either a technical review form letter or a waiver of review letter. INDOT receives a technical review form letter if the Storm Water Pollution Prevention Plan meets IDEM's acceptance criteria. Then INDOT submits the entire Notice of Intent to IDEM with a proof of public notice (the original advertisement with the notarized proof of publication). A waiver of review letter allows INDOT to proceed with the application process subject to further review.

The **Notice of Intent** (NOI) contains three components: the IDEM notification, a publisher's affidavit, Construction Plan (including the Storm Water Pollution Prevention Plan), and the processing fee instructions to obtain the processing fee from INDOT. The completed Rule 5 Notice of Intent (NOI) letter form should be sent to the following address:

Indiana Dept. of Environmental Management
Office of Water Management
Attn: Rule 5 Coordinator
100 N. Senate Ave.
MC 65-42 IGCN 1255
Indianapolis, IN 46204

The NOI letter form, which includes the proof of publication, technical review form letter or review waiver letter from the reviewing authority, and filing fee must be submitted at least 48 hours prior to the start of land disturbing activities. A separate NOI letter is required for each submitted construction plan, and the project site acreage identified in the construction plan must directly correspond to the acreage figures provided in the NOI letter. IDEM will contact the project site owner about the NOI submittal if there are deficiencies.

IDEM will mail a notification letter to all Rule 5 permittees who have exceeded the permit duration. The notification letter will serve three purposes: (1) to let current permit holders know their responsibilities; (2) to obtain permit renewal submittals for active project sites that have exceeded the maximum five-year permit duration from start of construction; and (3) to solicit Notice of Termination (NOT) form requests for project sites that have completed construction activities but did not submit an NOT form. Thus, a revised or new construction plan (including the Storm Water Pollution Prevention Plan) may be required if IDEM provides written notification to resubmit for permit coverage under Rule 5. If INDOT has an approved plan under the old Rule 5 requirements and is still conducting construction activities in the area defined under the previously approved plan, a new construction plan is may be required. A new NOI letter will be required every five (5) years, corresponding to the maximum duration for Rule 5

general permits. Ninety days prior to the lapse of the original NOI, INDOT must submit a new NOI with proof of new public notice showing the new completion dates.

Notice of Termination

When a project's construction is complete OES should receive a memo from the District that the project has had its final inspection. This memo should be sent shortly after the last day of work, do not wait until all contracts are settled out. OES will then fill out the IDEM Notice of Termination (NOT) form (see Appendix J-7). When this form is sent to IDEM the Rule 5 permit is complete and the file can be archived.

Administrative questions regarding Rule 5 requirements may be directed to IDEM's Rule 5 Coordinator at (317) 233-1864 or (800) 451-6027, extension 31864.

MS4 Program. For INDOT road construction projects located within an area regulated by a Municipal Separate Storm Sewer System (MS4) entity subject to the individual or general permit requirements for Indiana's MS4 program, the following information should be noted. Currently, only project sites within portions of [Marion County](#) (including the City of Indianapolis, but excluding the Cities of Beech Grove, Lawrence, Southport and Speedway) must comply with a different submittal process. Eventually, MS4 entities in other parts of the state will establish construction site and post-construction runoff control programs that may require submittal and procedural differences. Once established, a listing of these MS4 entities will be available on IDEM's web page to provide information on where a project site owner would need to submit information for construction activities.

Timing of Permit Information Submittals. For Rule 5 submissions, data necessary to complete the applications, attachments, etc., must be sent to the Office of Environmental Services (OES) seven months before the scheduled RFC date for the project. The designer will include the RFC date in the transmittal to OES. On Interstate rehabilitation projects and other projects of short project development duration, Rule 5 Submissions should be made as soon as feasible.

3.5.2.4 Permit Review/Approval

INDOT, or its designated contractor, must notify the Rule 5 Coordinator at (317) 234-3980 and, if applicable, the local SWCD construction plan review office within 48 hours of actual construction activity start-up to inform them of the actual project start date. The actual project start date will be used to calculate the maximum five-year duration date of the permit.

Copies of all permits should be included when the final special provisions are submitted at final tracings stage. The copies should be single-sided. Furnishing duplex copies has occasionally resulted in missing pages in the contract document. If the final special provisions are turned in before all of the approved permits are available, it is the designer's responsibility to ensure that copies are furnished to the Division of Contract Administration after the approved permits are received. INDOT shall ensure that plans, specifications, and estimates are consistent with the permit conditions for INDOT projects. For example, special provisions and a pay item for erosion control blankets should be included where required by a permit.

Revisions are often made to the Storm Water Prevention Plans and summary tables after final tracings are submitted. It is the designer's responsibility to initiate plan and contract revisions for all changes that arise during the Rule 5 Submission approval process. Plan revisions and construction changes must be processed in accordance with the Design Manual Sections 14-1.02(04) and 14-1.02(05), respectively.

If a Rule 5 permit is required, the contractor must submit a written [Construction Plan](#) that discusses the sequencing of construction activities to IDEM following the contract award.

The approved construction plan must be implemented before, during, and after construction activities occur. Once the construction project has final acceptance from INDOT, a completed [Rule 5 Notice of Termination \(NOT\) form](#) must be submitted to the reviewing authority for verification. OES will submit the NOT to the reviewing authority. Once verified, the reviewing authority will return the NOT form to OES. A [step-by-step process summary](#) has been created to simplify the Rule 5 permitting process, which is located at:

<http://www.in.gov/idem/permits/water/wastewater/wetwthr/storm/rule5defs.html#compliance>

3.5.3 IDEM Section 402 National Pollutant Discharge Elimination System (NPDES) Point-Source Permit

3.5.3.1 Background

Typically, Section 402 permitting is only required for INDOT projects when constructing or re-constructing INDOT rest areas and weigh stations. OES is responsible for obtaining permits for these types of activities. Monthly reporting for rest areas and weigh stations is the responsibility of the Office of Facilities Management.

Currently, storm water runoff from mainline pavement, shoulders, ramps, etc., which does not enter combined sewers, does not fall under jurisdiction of the NPDES - Point Source Rule 402 Permit program. Should storm water runoff enter a combined sewer, INDOT through the designer and OES will obtain permission from the owner of the combined sewer system.

If there is some question on whether or not storm runoff is within the permit program's jurisdiction, contact OES. The OES should be queried on a case-by-case basis to determine the permitting requirements of this program. The designer is responsible for submitting to the OES all supporting documents and required sketches showing the project locations, as well as other appropriate data.

3.5.3.2 Application Process

To apply for a Section 402 Point Source Discharge Permit, fill out **EPA Form 3510-2D** Application for Permit to Discharge Process Wastewater, August 1990 ("Form 2D") (in Appendix H) and IDEM's "General Information Form" (in Appendix K-1). In addition, **State Form 49456, IDEM Identification of Potentially Affected Parties** (in Appendix K-2) must be completed so that IDEM may appropriately notify parties potentially affected by the permit.

3.5.3 IDEM Isolated Wetland Permit

For Section 404 Permits, 401 WQC, Isolated wetlands, Section 9 and Section 10 permits the permitting agencies publish the public notice. Once INDOT has completed and submitted the permit application, then the permitting agency utilizes the information provided to publish a public notice. These agencies will not issue a permit until completion of this public notice process.

3.5.4.1 Background

An IDEM isolated wetland permit, may be obtained as a stand alone permit, provided the project only impacts isolated wetlands. However, if there are impacts to jurisdictional streams and/or wetlands in addition to impacts to isolated wetlands; then all other appropriate permits must be obtained. Please note that a USACE jurisdictional waters determination (stating that the wetlands involved are isolated) is required prior to the submission of an isolated wetland permit application to IDEM. As with all other permits, isolated wetland permits are attached to the construction plans as special provisions via the Special Provisions Package (SPP). The type of isolated wetlands permit required hinges upon the type of isolated wetlands impacted (Class I, Class II, or Class III). As per 327 IAC 17-1-3, the following are definitions of the three classes of isolated wetlands.

“Class I wetland” means an isolated wetland described by one (1) or both of the following:

(A) At least fifty percent (50%) of the wetland has been disturbed or affected by human activity or development by one (1) or more of the following:

- (i) Removal or replacement of the natural vegetation.
- (ii) Modification of the natural hydrology.

(B) The wetland supports only minimal wildlife or aquatic habitat or hydrologic function because the wetland does not provide critical habitat for threatened or endangered species listed in accordance with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and the wetland is characterized by at least one (1) of the following:

- (i) The wetland is typified by low species diversity.
- (ii) The wetland contains greater than fifty percent (50%) areal coverage of nonnative invasive species of vegetation.
- (iii) The wetland does not support significant wildlife or aquatic habitat.
- (iv) The wetland does not possess significant hydrologic function.

“Class II wetland” means either of the following:

- (A) An isolated wetland that is not a Class I or Class III wetland.
- (B) A type of wetland listed in subdivision (3)(B) that would meet the definition of Class I wetland if the wetland were not a rare or ecologically important type.

“Class III wetland” means an isolated wetland:

(A) that:

(i) is located in a setting undisturbed or minimally disturbed by human activity or development; and

(ii) supports more than minimal wildlife or aquatic habitat or hydrologic function; or

(B) unless classified as a Class II wetland under subdivision (2)(B), that is of one (1) of the following rare and ecologically important types:

(i) Acid bog

(xii) Panne

(ii) Acid seep

(xiii) Sand flat

(iii) Circumneutral bog

(xiv) Sedge meadow

(iv) Circumneutral seep

(xv) Shrub swamp

(v) Cypress swamp

(xvi) Sinkhole pond

(vi) Dune and swale

(xvii) Sinkhole swamp

(vii) Fen

(xviii) Wet floodplain

(viii) Forested fen

forest

(ix) Forested swamp

(xix) Wet prairie

(x) Marl beach

(xx) Wet sand prairie

(xi) Muck flat

Exempted Isolated Wetland. Certain isolated wetlands have been deemed as “exempt isolated wetland” by the General Assembly and IDEM and thus require no permit. The language below reflects the definition of “exempt isolated wetland” as set forth in 327 IAC 17-1-3(7).

A. An isolated wetland that is a voluntarily created wetland unless:

(1) the wetland is approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act or IC 13-18-22 or reclassified as an SRW [State Regulated Water] under IC 13-18-22-6(c); or

(2) the owner of the wetland declares, by a written instrument recorded in the office of the recorder of the county or counties in which the wetland is located and filed with the IDEM, that the wetland is to be considered in all respects to be an SRW.

B. An isolated wetland that exists as an incidental feature in or on any of the following:

(1) A residential lawn.

(2) A lawn or landscaped area of a commercial or governmental complex.

(3) Agricultural land.

(4) A roadside ditch.

(5) An irrigation ditch.

(6) A manmade drainage control structure.

C. An isolated wetland that is a fringe wetland associated with a private pond.

D. An isolated wetland that is, or is associated with, a manmade body of surface water of any size created by:

- (1) excavating;
- (2) diking; or
- (3) excavating and diking;

dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes.

E. An isolated wetland that is a Class I wetland with an area, as delineated, of one-half ($\frac{1}{2}$) acre or less.

F. An isolated wetland that is a Class II wetland with an area, as delineated, of one-fourth ($\frac{1}{4}$) acre or less.

G. An isolated wetland that is located on land:

- (1) subject to regulation under the United States Department of Agriculture wetland conservation rules, also known as Swampbuster (16 U.S.C. 3801-3862), because of voluntary enrollment in a federal farm program; and
- (2) used for agricultural or associated purposes allowed under the rules referred to in this section.

H. For purposes of clause (B), an isolated wetland exists as an incidental feature:

1. if:
 - a. the owner or operator of the property or facility described in clause (B) does not intend the isolated wetland to be a wetland;
 - b. the isolated wetland is not essential to the function or use of the property or facility; and
 - c. the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; **and**
2. if the isolated wetland satisfies any other factors or criteria established in rules that are adopted by the water pollution control board and not inconsistent with the factors and criteria described in this clause.

I. The total acreage of Class I wetlands on a tract to which the exemption described in clause (E) may apply is limited to the larger of the following:

1. The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (E).
2. Fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (E) but for the limitation of this subdivision.

J. The total acreage of Class II wetlands on a tract to which the exemption described in clause (F) may apply is limited to the larger of the following:

1. The acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in clause (F).

2. Thirty-three and one-third percent (33%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in clause (F) but for the limitation of this subdivision.

K. An isolated wetland described in clause (E) or (F) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under clause (E) or (F) consistent with the applicable limitations *described in clauses (I) and (J).

3.5.4.2 Application Process

The Indiana Department of Environmental Management (IDEM) **Form 51822**, is located in Appendix I-5 and **Form 51821** is located in Appendix I-2. Appendix I-3 provides instructions concerning the completion of Form 51822 and Form 51821.

Wetland Class	Type of Impact	Form
Class I	Significant	51821
Class I	Minimal	51822
Class II	Significant	51821
Class II	Minimal	51822
Class III	Any	51821

An IDEM **Form 51822** must be completed whenever a proposed activity will have minimal impacts to Class I and Class II isolated wetlands within the State of Indiana in accordance with Indiana Code § 13-18-22-1 *et seq.* and 327 IAC 17 (See Appendix I-4 for definitions of the types of isolated wetlands).

<http://www.in.gov/icpr/webfile/formsdiv/51822.doc> - Application for Combined Isolated Wetlands General Permit

An IDEM **Form 51821** is required whenever a proposed activity will have: (1) significant impacts to Class I or Class II isolated wetlands and/or (2) impacts upon Class III isolated wetlands.

<http://www.in.gov/icpr/webfile/formsdiv/51821.pdf> - Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State

3.5.4.3 Submissions

IDEM Forms 51821 and 51822 will be used to evaluate the project for certification. If the application lacks information necessary to demonstrate the criteria set forth in 327 IAC 17, then IDEM will inform INDOT in writing of the additional information that must be submitted.

For INDOT-OES Waterway Permits Unit review and preparation, information for the IDEM Forms 51821 and 51822 shall be submitted separately from a Section 401 WQC Regional General Permit Notification/Section 404 Application for Department of Army Permit package to the following address:

Waterway Permits Unit Supervisor
INDOT – OES
100 N. Senate Ave., 6th Floor
Indianapolis, IN 46204

The following information is necessary to process IDEM Form 51821 or Form 51822:

- USACE approved wetland delineation as performed in accordance with the 1987 USACE wetland delineation manual and any other procedures for delineating wetland.
- USACE Isolated Wetland Determination
- INWRAP or other appropriate function/value evaluation for wetlands
- Project description
- Location and wetland mapping (USGS map, mapping/plan sheet clearly showing wetlands and impacts, other relevant mapping) in 8.5 x 11 format
- Photographs (with photograph location mapping) of the wetlands included in the application
- An acceptable mitigation proposal in accordance with 327 IAC 17. These materials shall be sent to the above address for review by OES-WPU.

Once the project has been reviewed by OES, any comments or requests for additional information will be forwarded to the appropriate INDOT district office/designer. Upon resolution of all comments, the appropriate application form will be submitted to IDEM for processing.

3.5.5 Rule 13 (327 IAC 15-13, 327 IAC 5-4-6(a)(4))

3.5.5.1 Background

Under USEPA's Phase II storm water program, municipalities over a certain size, as well as State Departments of Transportation, are required to reduce non-point-source water pollution within their jurisdictions. In Indiana, IDEM implemented a general statewide permit program for municipalities and an individual permit for INDOT.

Six major elements are required by the program:

1. Public Education and Outreach
2. Public Involvement/Participation

3. Illicit Discharge Detection and Elimination
4. Construction Site Storm Water Runoff Control
5. Post-Construction Storm Water Management in New Development and Redevelopment
6. Pollution Prevention/Good Housekeeping for Municipal Operations

The majority of these activities are incorporated into INDOT's maintenance and facilities management programs, but some items are applicable to highway project design and construction. Additional water management features (ponds, landscaping, etc.) may be required during design to address post-construction water quality requirements, and stricter Standard Specifications have been implemented to control construction site runoff.

3.5.5.2 Application Process

INDOT applied for an individual storm water permit in 2003. IDEM is in the process of reviewing the application.

3.5.5.3 Submissions

No separate submittals are currently required for Rule 13 compliance on highway projects, although extra information could be requested by resource agencies as part of the Rule 5 process.

3.5.5.4 Permit Review/Approval

Compliance with Rule 13 for highway projects is managed through Rule 5 Erosion Control permits.

3.6 IDNR Permits

There are several types of IDNR permits that may be required for INDOT projects. IDNR, Division of Water is responsible for issuing these permits. Six IDNR permits utilize the same permit application form for construction. They are as follows:

- Flood Control Act (Construction in a Floodway Permit)
- Navigable Waterways Act (Navigable Waterways Permit)
- Lake Preservation Act
- Lowering of the Ten Acre Lake Act (Ditch Act)
- Sand and Gravel Permits Act
- Construction of Channels Act

To apply for these permits, use the Permit Application for Construction Form #42946 (R6 / 2-05) (see Appendix M-2). Appendix M-3 provides instructions concerning the completion of the permit application.

3.6.1 Public Notice

The Procedures Governing Certain Licenses Act (IC 14-11-4) was enacted to ensure that the general public is afforded the opportunity to participate in certain regulatory programs administered by the IDNR. The Act prohibits IDNR from acting on a permit application until 30 days after the public notice requirement has been met. The following five programs administered by the Division of Water are subject to the Act's public notice requirements:

Lakes Preservation Act (IC 14-26-2),
Lowering of Ten Acre Lakes Act,
Flood Control Act (IC 14-28-1),
Sand and Gravel Permits Act (IC 14-29-3), and
Construction of Channels Act (IC 14-29-4).

The IDNR guidance for providing public notice can be found at:

http://www.in.gov/dnr/water/permits/application_manual/generalpublicnotice.html
http://www.in.gov/dnr/water/permits/application_manual/publicnotice.html

See Appendix M-5 for detailed guidance on DNR public notice.

3.6.2 Construction in a Floodway

An IDNR Certificate of Approval for the Flood Control Act (Construction in a Floodway Permit) located in Appendix M-2 is required for any construction in a floodway, where the drainage area is equal to or greater than 1 mi². An exemption exists for state or county bridge construction where the drainage area is equal to or greater than 50 mi² and the project is located in a rural area. Projects with more than 100 ft of channel relocation beyond the bridge coping may not qualify for the exemption. In these instances, the project should be reviewed by the OES - WPU to determine if a permit application should be filed.

The legal references for the IDNR Certificate of Approval for Construction in a Floodway are the **Flood Control Act** IC 14-28-1, and IC 14-3-16 (Public Notice). The administrative rules are contained in 312 IAC-10.

The purpose of the IDNR Certificate of Approval for Construction in a Floodway is to protect the floodway from undue restrictions and other environmental factors and to protect against interference to navigation when the project is located on a navigable waterway. The Flood Control Act (IC 14-28-1) requires that any person proposing to construct a structure, place fill, or excavate material at a site located within the floodway of any river or stream, unless that activity is exempted or qualifies for a general license, must obtain the written approval of the Department of Natural Resources (IDNR) prior to initiating the activity. This law was originally enacted to protect Indiana citizens from the loss of lives and property caused by floods, and ensure that floodway channels are not inhabited and/or are kept free and clear of interference or obstruction that will result in undue restriction to the capacity of the floodway. Since then it has been expanded to protect Indiana's fish, wildlife, and/or botanical resources located in the floodway.

A "**floodway**" is defined as the channel of a river or stream and those portions of the flood plain adjoining the channel which are reasonably required to efficiently carry and discharge the flood water or flood flow of any river or stream (**the 100 year frequency flood elevation**). If there are doubts as to the limits of the floodway, IDNR, Division of Water can provide guidance.

When assessing a proposed project, IDNR is required to evaluate the singular and cumulative affects of the proposed activity upon:

- * the efficiency and capacity of the floodway;
- * the safety of life and property; and
- * fish, wildlife, and/or botanical resources.

Typical transportation projects which could require IDNR approval when work occurs within a floodway may include, but would not be limited to:

- bridge and/or culvert construction or widening;
- bank protection;
- channel modification and/or relocation;
- temporary runaround structure construction, including approaches;
- construction access bridges and/or causeways;
- borrow pit excavation; and
- cofferdams

EXEMPTIONS Some projects that are exempted from obtaining a Certificate of Approval for Construction in a Floodway are as follows:

- Projects (except for dams, dikes, and levees) in floodways along streams and rivers that have a drainage area of less than 1 square mile.
- The placement of certain utilities lines under the streambed and certain aerial placement of electric, telephone or cable television lines.

- Construction or reconstruction projects on a state/county highway bridge in a rural area crossing a stream with an upstream drainage area of 50 square miles or less*
- The relocation of utility lines associated with the highway project that qualifies for an exemption if the utility lines are confined to an area not more than 100 feet from the limits of the highway construction right-of-way.

*** Bridge Exemption** - In order for a bridge project to be exempt from obtaining a Construction in a Floodway permit, the following criteria must be met:

1. The project must be a state or county highway department project;
2. The project must be a bridge (IDNR considers a culvert to be a bridge) project;
3. The project must be located in a rural area. A rural area is defined as an area where:
 - A. The lowest floor elevation (including basement) of any residential, commercial, or industrial building impacted by the project is at least 2 feet above the 100 year flood elevation with the project in place;
 - B. The project is located outside the corporate boundaries of a consolidated or an incorporated city or town; and
 - C. The project is located outside of the territorial authority for comprehensive planning (generally a 2 mile buffer around a city or town).
4. The project must cross a stream having an upstream drainage area of less than fifty (50) square miles. The drainage area includes all land area contributing to runoff above the project site and is determined from the United States Geological Survey 7 ½ minute series quadrangle maps. IDNR will determine the drainage area upon written request.

All four criteria must be met in order for a project to be eligible for the exemption. If a bridge project does not qualify for the exemption, and work occurs within the floodway, then a Certificate of Approval for Construction in a Floodway must be obtained. This bridge exemption has been grossly misunderstood and liberally applied in the past. As a result, IDNR is taking a firm stance on future violations. If challenged, it will be the responsibility of the person claiming the exemption to prove to IDNR that all four criteria have been satisfied. Failure to do so will result in litigation with the potential for the imposition of fines in amounts up to \$10,000.00 per day. **This exemption only applies to the Flood Control Act (Certificate of Approval for Construction in a Floodway). If a bridge is to be constructed over a navigable waterway, or over or near a public freshwater lake, a permit will be required.**

3.6.2.1 Application Process

To apply for a IDNR Certificate of Approval for Construction in a Floodway, fill out IDNR Permit Application for Construction, form #42946 (see Appendix M-2). See Appendix M-3 for instructions for completing the Joint Application Form, State Form #42946.

3.6.2.2 Submissions

INDOT submits the following information to IDNR to obtain the permit:

1. A completed application form;
2. Proof of public notice as required by law;
3. Plans, maps and specifications describing the activity; and
4. Other information as required by IDNR.

3.6.2.3 Permit Review/Approval

Processing time is dependent upon the magnitude of the project and the completeness of the submittal. Typically, **180 days from the date of submittal** is required to complete a project review. However, the assessment of runarounds, construction access structures, such as cofferdams and causeways, and borrow pits may be performed within two to three weeks as a permit amendment letter if they are associated with a previously approved project. Additionally, these projects are not subject to items 1 and 2 listed above, when they are associated with a previously approved project.

For INDOT or county highway department projects that are federally funded, the **Construction in a Floodway Permit is valid for 5 years from the date of issuance and remains valid indefinitely if construction is commenced within 5 years from the date of issuance**. All Construction in a Floodway Permits include conditions, which have the force of law and with which INDOT must comply. It is the responsibility of the designer to deliver the permit to the construction project engineer/supervisor during the preconstruction conference or make other arrangements for its delivery. The permits and conditions should be included in the letting package. It is the project construction engineer/supervisor's responsibility to be familiar with these conditions, and comply with them at all times. If there are conditions that INDOT cannot feasibly comply with, contact Office of Construction Management for assistance. Do not ignore any conditions. IDNR may use an enforcement action to ensure the compliance with the provisions of the permit or prohibit unauthorized activity in the floodway. Waivers can be obtained for certain conditions.

An IDNR Construction in a Floodway Permit can also serve as a permit under the Navigable Waterway Act. However, exemption from the Construction in a Floodway Permit does not exempt INDOT from obtaining a Navigable Waterway Permit.

The Construction in a Floodway Permit must be posted and maintained at the project site.

3.6.2.4 General License For Logjam Removals And Sandbar Removals Beneath Bridges

Background

On November 1, 1997, IDNR published the final rule that grants provisions for certain logjam and debris removals at state and county bridge sites within the floodway provided that the project meets the construction standards specified by the rule. In addition, IDNR notification of the project for the general license is dependent on the methods of the proposed activities and the location of the obstruction.

A logjam is defined as “an accumulation of lodged trees, root wads, or other debris that impedes the ordinary flow of water through a river or stream. The term does not include the development of sandbars, sedimentation, or accumulations of stone or gravel”. Logjams are evidenced by blockage that does any of the following:

1. traverses the waterway
2. causes upstream ponding
3. results in bank erosion

Rule 312 IAC 10-5-7 sets forth the criteria for a general license for logjam and sandbar removals from beneath bridges **without** notification to IDNR. The following link references 312 IAC 10-5-7: <http://www.in.gov/legislative/iac/T03120/A00100.PDF>

This general license applies only at bridge sites (IDNR includes culverts and fords within the definition of bridge). Logjam and sandbar removals from beneath bridges are allowed under a general license without notification to IDNR when all three of the following criteria can be met:

1. equipment is operated from the bridge or the bank within the right-of-way, with no equipment placed in the river or stream;
2. an access corridor for the placement of equipment extends no more than fifty (50) feet beyond the right-of-way; and
3. the logjam or sandbar to be removed is located partially or exclusively within the right-of-way.

If, however, there is a **logjam located in a channel paralleling the roadway that is not near a bridge or culvert**, then the general license under this provision would not apply and further review should be considered under the general license language of Sections 312 IAC 10-5-0.3, 312 IAC 10-5-0.6, and 312 IAC 10-5-6.

General License for Logjam and Obstruction Removals from Waterways with Notification to IDNR

In those cases where the logjam or obstruction removal project cannot meet the criteria listed under 312 IAC 10-5-7, the project may still qualify for a general license with notification to IDNR pursuant to 312 IAC 10-5-0.3, 312 IAC 10-5-0.6, and 312 IAC 10-5-6.

To determine eligibility for a general license, projects are assessed based on the following general criteria:

- (1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana unless prior written approval from the division of water’s environmental unit has been obtained.
- (2) Within a salmonid stream designated under 327 IAC 2-1.5-5(a)(3).
- (3) Within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.

(4) For a utility line crossing, below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 in the Roster of Indiana Waterways Declared Navigable or Nonnavigable unless the utility line is placed beneath the bed of the waterway under section 4(b) of this rule.

(5) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

Additionally, logjam and obstruction removal project requests located within one-half (1/2) mile of any of the following do not qualify for a general license:

(1) A species listed in the Indiana Register at 15 IR 1312 in the Roster of Indiana Animals and Plants Which Are Extirpated, Endangered, Threatened, or Rare.

(2) A known mussel resource.

(3) An outstanding natural area, as contained on the registry of natural areas maintained in the natural heritage data center of the department.

In those instances where a general license is not granted, a permit application will need to be filed with the Division of Water.

General License Notification Process

Complete and file a written notice using the [obstruction removal form](#), **Notification of Construction in a Floodway under IC 14-28-1 for Obstruction Removal for River and Stream Maintenance** (State Form #51039 (9-02), located in Appendix L to IDNR – Division of Water, Attn: Environmental Unit. IDNR will evaluate the proposed project and either issue a general license or instruct the project contact to apply for a Construction in a Floodway Permit.

Include with the form the following detail information:

1) A description of the river or stream where the project would occur, including: terminal points, access routes, and disposal sites of the project on a map such as a USGS topographic map; a national wetlands inventory map; or another map approved by DNR

(2) If some of the activities will be performed on behalf of the person by an independent contractor, include the name, address, and telephone number of the independent contractor

(3) Permission must be demonstrated for an access route and disposal site.

(4) Photographs, videotapes, or other graphic documentation that demonstrate existing site conditions.

Include an 8½" X 11" copy of a USGS topographic map, and a national wetlands inventory map or another map approved by IDNR. The maps should indicate the location of the site. The OES will submit this information to IDNR

General License Application Review/Approval

For those projects that do require written notice under the general license provisions, IDNR is required to respond within 10 working days from the date of receipt. Failure to respond within this time frame results in general license by default.

A copy of the written notice (Notification of Construction in a Floodway under IC 14-28-1 for Obstruction Removal for River and Stream Maintenance (State Form #51039 (9-02)) and any additional conditions provided by IDNR must be posted by INDOT in a conspicuous location at the project site.

3.6.3 IDNR Navigable Waterways Permit

3.6.3.1 Background

Navigable Waterways Act The Navigable Waterways Act ([IC 14-29-1](#)) regulates various development activities (e.g. placing, filling or erecting structures, water withdrawal, and mineral extraction) from a navigable waterway by requiring a permit from the IDNR prior to the beginning of the project. IDNR authority under the Navigable Waterways Act is further defined in [312 IAC 6: Navigable Waterways](#).

1. The determination of whether or not a waterway satisfies both definitions can be time consuming. Therefore, the IDNR has prepared a roster of the State's navigable waterways. The roster was printed as a nonrule policy document in the Indiana Register, Volume 15, Number 10, (15 IR 2385) on July 1, 1992 under the title "[Natural Resources Commission, Information Bulletin #3, Roster of Indiana Waterways Declared Navigable](#)". Inclusion in the roster does not necessarily indicate that a waterway is navigable, only that sufficient evidence exists to recognize them as such. A copy of the roster is included in the Appendix O.
2. The accepted limit of jurisdiction on a navigable waterway is the ordinary high water mark unless the State's boundary is present. The "ordinary high water mark" is also defined by rule:
 - a. **"ordinary high water mark"** means "the following:
 - (1) The line on the shore of a waterway established by the fluctuations of water and indicated by physical characteristics. Examples of these physical characteristics include the following:
 - (A) A clear and natural line impressed on the bank.
 - (B) Shelving.
 - (C) Changes in the character of the soil.
 - (D) The destruction of terrestrial vegetation.
 - (E) The presence of litter or debris.

- (2) Notwithstanding subdivision (1), the shore of Lake Michigan at five hundred eighty-one and five-tenths (581.5) feet, I.G.L.D., 1985 (five hundred eighty-two and two hundred fifty-two thousandths (582.252) feet, N.G.V.D., 1929)".

3.6.3.2 Regulated Activities

The Navigable Waterways Act states that any person proposing to construct a permanent structure, place fill, excavate material, or withdraw water at a site below the ordinary high water mark of a navigable waterway must obtain the written approval of the Indiana Department of Natural Resources **prior** to initiating the activity.

The IDNR Navigable Waterways permit is obtained as a part of the IDNR Certificate of Approval for Construction in a Floodway when the Navigable Waterways permit is required. Typically, the applicant does not need to take any action to request this permit other than making application for the IDNR Construction in a Floodway Permit.

INDOT projects requiring IDNR approval may include, but would not be limited to the following:

- bridge and/or culvert construction or widening;
- bank protection;
- channel modification and/or relocation;
- temporary runaround structure construction; and
- construction access bridges and/or causeways.
- In assessing the proposed project, IDNR is required to evaluate the singular and cumulative effects of the proposed activity upon:
 - the navigability of the waterway;
 - the safety of life and property; and
 - the environment and cultural resources.

An IDNR Construction in a Floodway permit can also serve as a Navigable Waterways Act permit. However, exemption from the Construction in a Floodway permit does not necessarily exempt INDOT from obtaining a Navigable Waterways Act permit.

Exempted Activities The Navigable Waterways Act's regulatory program contains a number of exemptions to minimize duplicity of regulation. **Specifically, a permit under the Act is not required if a permit has been obtained under any of the following State statutes and the requirements of the Navigable Waterways Act have been applied in the project review.**

[Division of Historic Preservation and Archaeology Act \(IC 14-21-1\)](#)

[Flood Control Act \(IC 14-28-1\)](#)

[Sand and Gravel Permits Act \(IC 14-29-3\)](#)

[Construction of Channels Act \(IC 14-29-4\)](#)

[Surface Coal Mining and Reclamation Act \(IC 14-34\)](#)

[Oil and Gas Act \(IC 14-37\)](#)

See Appendix O for the IDNR Navigable Waterways Roster.

3.6.3.3 Application Process

To apply for a Navigable Waterways Act Permit, fill out IDNR Permit Application for Construction, Form #42946 (see Appendix M-2). See Appendix M-3 for instructions for completing the Joint Application Form, state form #42946.

3.6.3.4 Submissions

The application is submitted to IDNR, Division of Water. Include the following information:

1. a completed application (DNR Permit Application for Construction, Joint Application Form, state form 42946);
2. proof of public notice as required by law;
3. plans and specifications describing the activity; and
4. other information as required by the department.

3.6.3.5 Permit Review/Approval

Project Evaluation Criteria To determine if a proposed project is approvable, IDNR evaluates a project's impact using the criteria prescribed within the Act:

1. whether or not the project will unreasonably impair the navigability of the waterway;
2. whether or not the project will cause significant harm to the environment; and
3. whether or not the project will pose an unreasonable hazard to life or property.

Processing time is dependent on the magnitude of the project, and on the completeness of the submittal. Typically, 90 to 180 days is required to complete a project review. However, the assessment of runarounds and construction access structures may be performed within two to three weeks if they are associated with a previously approved project. Additionally, work associated with previously approved projects is **not** subject to items 1 and 2 above.

All Construction in a Floodway Permits include conditions, which have the force of law and with which INDOT must comply. It is the responsibility of the designer to deliver the permit to the construction project engineer/supervisor during the preconstruction conference or make other arrangements for its delivery. The permits and conditions should be included in the letting package. It is the project construction engineer/supervisor's responsibility to be familiar with these conditions, and comply with them at all times. If there are conditions that INDOT cannot feasibly comply with, contact the Office of Contract Administration for assistance. Do not ignore any conditions.

3.6.4 IDNR Dewatering Well Installation

3.6.4.1 Background

Who Must Register Indiana Code 14-25-7 requires every person who has a significant water withdrawal facility to register that facility with the Natural Resources Commission. A water

withdrawal facility includes wells, surface water intakes, pumping apparatus or other installation which supply water to a common collection and/or distribution point. As defined by the statute, a **significant water withdrawal facility** means the water withdrawal facilities of a person that, in the aggregate from all sources and by all methods, has the capability of withdrawing more than one-hundred thousand (100,000) gallons of ground water, surface water, or ground and surface water combined in one (1) day; however, this does not include water withdrawal facilities located in or on an off stream impoundment that is principally supplied by a significant water withdrawal facility.

3.6.4.2 Application Process

If the dewatering well will be temporary, a report must be sent to IDNR, Division of Water. See Appendix N-2 for the Temporary Construction Dewatering Report Form 50355 and Appendix N-3 for instructions to complete the form. If the well is to be permanent, then a registration of the well will be required, see Appendix N-1 for Registration of a Significant Water Withdrawal Facility Form 20094. Go to the attached web site for a list all applicable IDNR forms - www.in.gov/dnr/water/forms/index.html.

3.6.5 Water Well Abandonment

3.6.5.1 Background

The Indiana Department of Natural Resources (IDNR) regulates the closure of water wells, to ensure that wells are properly sealed and will not become a potential source of groundwater contamination. Wells must be closed by a licensed driller, following procedures outlined in the regulations (312 IAC 13-10-2).

3.6.5.2 Application Process

No permit is required to close a drinking water well. The licensed driller is responsible for submitting Record of Water Well Form 35680 (Appendix N-4) to the IDNR.

3.6.6 IDNR Lake Preservation Act ([IC 14-26-2](#))

3.6.6.1 Background

Typical activities requiring Lake Preservation Act permits are: dredging, construction of seawalls and refacing of seawalls in public freshwater lakes. Temporary piers are allowed without a permit. Permanent piers or fills are viewed as degrading the integrity of the resource and will only be approved when the applicant can demonstrate that the project will have a substantial public benefit.

The following water bodies are exempted from the requirements of the Act:

- Lake Michigan
- Wolf Lake and Lake George in Hammond

- Lake Shafer and Lake Freeman (shoreline alteration)
- Lakes created by or used for surface mining
- Off-stream, privately-owned water impoundments constructed for the reduction of pollutants before discharge to public waters
- Public water supply reservoirs (dredging or shore stabilization within 100-year pool)

3.6.6.2 Application Process

To apply for a Lake Preservation Act Permit, fill out IDNR Permit Application for Construction, Form #42946 (see Appendix M-2). See Appendix M-3 for instructions for completing the IDNR Permit Application for Construction, Joint Application Form, State Form #42946.

3.6.7 Lowering of Ten Acre Lakes Act ([IC 14-26-5](#))

3.6.7.1 Background

The Lowering of Ten Acre Lakes Act provides safeguards against the lowering of a freshwater lake's water level as the result of a ditch and/or drain activity. Under the provisions of the Act, IDNR regulates all ditch and/or drain work that is both located within ½ mile of a freshwater lake's shoreline and has a bottom depth below the lake's normal water level. Ditches are regulated regardless of whether they drain to or from the lake, or run alongside it.

Typical activities requiring a permit include: ditch construction and/or reconstruction; tile drain installation and/or repair; and the installation of pipelines having non-watertight joints.

3.6.7.2 Application Process

To apply for a Lowering of Ten Acre Lakes Permit, fill out IDNR Permit Application for Construction, Form #42946 (see Appendix M-2). See Appendix M-3 for instructions for completing the IDNR, Permit Application for Construction, Joint Application Form, State Form #42946.

3.7 County Regulated Drain Permits

3.7.1 Background

Regulated drains are established by law in IC 36-9-27. Each county has its own rules and not all counties require approval to do work within a regulated drain. For regulated drains, the county drainage boards for those counties within the project location have overall responsibility for reviewing applications and issuing approvals.

The purpose of the Regulated Drain Permit is to notify a county if INDOT's proposed construction impacts a regulated drain. All regulated drains must have plans submitted by

INDOT for review/approval by the county drainage board. There are five counties that require permits when a project affects a regulated drain: Allen, Elkhart, Hamilton, Lake, and LaPorte.

3.7.2 Application Process

The counties are notified by sending a set of plans and an invitation to the preliminary field check to the county surveyor's office. Some counties require formal permission before INDOT performs any construction impacting regulated drains. Appendix Q has the Petition for Consent to Allow Permanent Structure in Legal Drain pursuant to IC 36-9-27-72 application forms for the five counties requiring a formal application.

3.7.3 Submissions

Allen, Elkhart, Hamilton, Lake, and LaPorte Counties require notification of any change in drainage. A Regulated Drain application typically requires the following:

1. Description of project;
2. High water and low water elevations;
3. Legal description (if not on plans); and
4. Set of plans.

4.0 Mitigation

4.1 General Discussion

INDOT strives to avoid, to the fullest extent practicable, any activity that adversely impacts streams or wetlands during the design, construction, or maintenance of the state transportation system. INDOT takes appropriate action throughout the project development process to avoid, minimize, and mitigate impacts as required by federal, state, and local law. In the event that impacts to streams and wetlands are unavoidable, INDOT considers a wide variety of mitigation strategies, which always begins with evaluation of on-site opportunities (e.g. natural channel design techniques, bankfull culverts, wetland creation, etc.) within the project work area. Once the on-site (within the project area) resources are exhausted, the search for mitigation opportunities may shift to on-site, within the project area, followed by a search within a specific 8 Digit Hydrological Unit Code (HUC) watershed. Mitigation opportunities may include mitigation banking, stream and wetland creation, restoration, and/or preservation, and possibly even preservation of upland buffer adjacent to stream and wetland resources.

Impact analysis and mitigation are integral parts of the project development process. Early review and analysis of project alternatives by regulatory and resource agencies combined with effective inter-office coordination are required to develop successful transportation projects.

INDOT follows guidelines for the development of mitigation as required by USACE. USACE mitigation guidelines are outlined in the latest USACE Regulatory Guidance Letter (RGL) 02-02, dated December 24, 2002 (http://www.swg.usace.army.mil/reg/mitigation/map-rgl/rgl_02-2.pdf). Mitigation for INDOT projects is being accomplished on a case-by-case basis and is negotiated with the permitting agencies by OES through the pre-application/coordination and waterway permit processes.

4.2 INDOT's Procedure for Mitigation

INDOT's general procedure for securing required mitigation for stream and wetland impacts includes the following:

- A. Determination of mitigation needs. The Ecological Survey Report (ESR) documents these potential project impacts.
- B. Analyze potential mitigation opportunities within the project area and/or close proximity or within a specific 8 Digit Hydrological Unit Code (HUC) watershed (<http://www.in.gov/idem/programs/water/wsp/wras2002.html> for 8 Digit HUC Watershed Map) where the impacts are anticipated to occur. This may require a partnership between INDOT and various organizations or individuals such as a watershed group, conservation group, a local park district, IDNR, or even a private landowner to secure appropriate mitigation.
- C. Develop preferred plan of action for mitigation
 - Select mitigation site(s); [on-site, off-site, or mitigation banks]
 - Provide funds to partnering organization for mitigation projects
 - Pursue conservation easements

- D. Develop conceptual mitigation plan/report.
- E. Coordinate conceptual mitigation plan/report with resource and regulatory agencies.
- F. Submit approved conceptual mitigation plan/report with waterway permit applications.
- G. Following waterway permit approval, develop final mitigation plans.
 - Develop construction plan
 - Procure conservation easements
 - Provide funds to partnering agencies
 - Procure credits at mitigation bank
- H. Construct and monitor mitigation, if applicable.
- I. Post construction monitoring, per waterway permits.

The Louisville District USACE published *Mitigation Guidelines* for projects involving the discharge of dredged or fill material into Waters of the U.S. Please refer to it when designing mitigation. <http://www.lrl.usace.army.mil/orf/article.asp?id=273> INDOT-OES-WPU is striving to develop more standardized procedures for acquisition of stream and wetland mitigation; however, due to the unique nature of individual projects, development of project specific mitigation will continue to be evaluated on case-by-case basis. INDOT-OES-WPU in cooperation with INDOT Districts, the INDOT-CO Office of Real Estate, the INDOT-CO Office of Aerial Engineering, and project consultants will continue to coordinate all mitigation issues. Final INDOT approval of project mitigation is a function of INDOT Central Office, OES-WPU. All questions on mitigation should be addressed to the OES-WPU.